

No. 15424

United States
Court of Appeals
for the Ninth Circuit

FOX WEST COAST THEATRES CORPORATION,
TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, INCORPORATED,
Appellants,

VS.

PARADISE THEATRE BUILDING CORPORATION,
Appellee.

PARADISE THEATRE BUILDING CORPORATION,
Appellant,

VS.

FOX WEST COAST THEATRES CORPORATION,
TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, INCORPORATED,
Appellees.

Transcript of Record

In Six Volumes

VOLUME II.

(Pages 465 to 952, inclusive)

Appeals from the United States District Court for the
Southern District of California,
Central Division

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(Testimony of George A. Hickey.)

Q. The next picture is Mystery Street. Who sent in bids?

A. La Tijera and United Artists, and then Fox withdrew their bid on the Fox Theatre, and the Academy sent in a bid, and the La Tijera. We negotiated on that.

Q. When you say the Fox Theatre, by this time, Mr. Hickey, in July, 1950, the United Artists was no longer operated by Fox. You mean the United Artists withdrew its bid? A. Yes.

Q. You say the La Tijera received the bid?

A. Yes.

Q. By negotiation? A. Yes.

Q. By negotiation?

A. Yes, by negotiation.

Q. All right. The next picture, to whom was it offered, Three Little Words?

A. It was offered to the La Tijera, United Artists, Academy.

Q. Who received the bid? [533]

A. The United Artists.

Q. The next picture is Summer Stock. Who made offers on that picture?

A. La Tijera and the United Artists and the Academy.

Q. Who received the bid?

A. La Tijera got it.

Q. The next picture is Lady Without A Passport. Who made offers?

A. La Tijera and the Academy, and the La Tijera got it by negotiation.

(Testimony of George A. Hickey.)

Q. Now we are up to that picture which opened August 9, 1950. We are up to that point.

I think we are all agreed that the Paradise Theatre opened August 23, 1950. Prior to that time had you had any conversation with Alex Schreiber, the president of the Paradise?

Mr. Corinblit: Your Honor, again this is a problem of getting a coherent picture into evidence. On direct examination I didn't ask Mr. Hickey a single word with regard to conversations with Mr. Schreiber. Mr. Schreiber will take the stand and on the defense case they can put in their examination. This permits the defense case to come in as the plaintiff's case, and it is going to extend it. I object to it on that ground.

The Court: Overruled. [534]

Mr. Mitchell: Will you read the question, Mr. Trainor?

(Question read.)

The Witness: Yes, he talked to me a few times.

Q. (By Mr. Mitchell): Do you remember when?

A. I don't remember the date, no.

Q. Well, let me show you defendant Loew's Exhibit A-10 and see if that will refresh your recollection on when Mr. Schreiber talked to you.

A. Yes.

Q. When did he talk to you?

A. Well, he talked to me about, oh, I would say March 20, 29th, something like that.

Q. 1950?

A. Yes, along in there somewhere.

(Testimony of George A. Hickey.)

Q. What did he say?

A. Well, he wanted first run.

Q. First run Los Angeles?

A. He wanted first run in Los Angeles and I wouldn't give it to him.

Q. What did you tell him you would give him?

A. I told him I would give him 7 day if he wanted to bid for it.

Q. All right. Now, I will——

The Court: Was this 7 day bidding the first offer [535] you made to him?

The Witness: No. I think the first offer we made to him was we offered him 21 days.

The Court: You didn't have a 7 day run in Los Angeles city limits?

The Witness: No.

The Court: Did you have a 14 day run in the Los Angeles city limits?

The Witness: I think we did, yes.

The Court: But you offered him 21 days?

The Witness: We offered him 21 days.

The Court: 21 days. All right.

Q. (By Mr. Mitchell): Was he agreeable to 21 days after Los Angeles?

A. Well, he was, and then he came in later and he wanted day and date with Los Angeles.

Q. At this conversation did you offer him seven days after Los Angeles on a bid against the theatres in Inglewood?

A. We told him he could bid the same as Inglewood, and that would be 7 days.

(Testimony of George A. Hickey.)

Q. The same as La Tijera? A. Yes.

Q. La Tijera was where, in what city?

A. They were in Los Angeles, but it was all in that area. [536]

Q. All right. I will show you defendant Loew's Exhibit D-3 and ask you if you recognize that.

A. Yes. That is exactly what I just said.

Q. Did you send this letter to Mr. Marco Wolff?

A. Yes.

Mr. Mitchell: I will offer it in evidence.

Mr. Corinblit: Your Honor, I don't want to say anything after your Honor's ruling on this point with respect to the defendants offering evidence and their exhibits as part of the plaintiff's case, but I don't believe that is proper. It doesn't certainly fit the ordinary test of cross examination.

The Court: It is not offered as a plaintiff's exhibit. They are offering them as an exhibit for—well, I'd better start all over again. I'm all confused.

They are offering that as a defendants' exhibit, not a plaintiff's exhibit.

Mr. Corinblit: That is correct, your Honor, but they are offering it during the course of the plaintiff's case where plaintiff has not offered such an exhibit.

The Court: I know, but you raised certain issues here. I think they have a right to combat the issue.

Mr. Corinblit: I certainly don't want to prevent the defendants from combatting any issue we have raised.

(Testimony of George A. Hickey.)

The Court: Objection overruled. It may be received in evidence. [537]

Mr. Mitchell: We offer this on redirect examination, your Honor.

The Court: All right.

Mr. Corinblit: Did I understand that you offer it on redirect?

Mr. Mitchell: That is correct.

The Court: You called the witness on cross examination.

Mr. Corinblit: Yes, your Honor. All right.

The Clerk: Loew's Exhibit D-3.

(The exhibit referred to was received in evidence and marked as Loew's Exhibit D-3.)

The Court: I might explain to the jury here some of the procedure that we follow in courts. The plaintiff ordinarily presents his evidence first. He calls his witnesses first and presents his case, but under the rules of court the plaintiff has a right to call the defendant as an adverse witness or as a hostile witness. Ordinarily the plaintiff, when he calls a witness, can't cross examine his witness. He can't lead the witness. But when he calls an adverse witness, he can cross examine that witness and he can lead that witness. He can bring out in any way he wants to the testimony of that witness.

This witness was called by the plaintiff as an adverse and hostile witness. This is one of the defendants' witnesses. [538] Ordinarily, if he hadn't been called by the plaintiff, he wouldn't show up in this case maybe for another two or

(Testimony of George A. Hickey.)

three weeks, but the plaintiff put him on the stand as an adverse witness, and he has the right to cross examine him.

Now Mr. Mitchell is taking the witness on re-direct and supposedly is refuting the testimony or clarifying the testimony which was brought out by the plaintiff in his cross examination of this witness. It is perfectly legal. It is only a question of procedure. There is nothing wrong with it.

Mr. Mitchell: Thank you, your Honor.

The Court: All right, Mr. Mitchell.

Q. (By Mr. Mitchell): Going back to your March conversation with Mr. Schreiber, did he tell you whether or not he was agreeable to that 7 day run in Inglewood-Westchester area, bidding against the La Tijera, Academy, and so on?

A. Well, he did.

Q. What did he say? A. He did bid.

The Court: No. The question is what did he say, not what he did.

Q. (By Mr. Mitchell): What did he say back in March, 1950?

A. Well, I don't think he wanted to——

The Court: No, don't tell me what he wanted to do. What did he say? [539]

The Witness: I really don't remember what he said. You now, it's hard to remember back. You have all these theatres to look after and if you would remember the conversations with every man that you talk to, you would go crazy. I can't re-

(Testimony of George A. Hickey.)

member everything that the man said, but what he wanted——

Mr. Corinblit: Your Honor, now——

The Court: I'm sorry. You can give the substance of the conversation. You can't tell what he wanted because that is a conclusion. What did he say?

Q. (By Mr. Mitchell): Did he tell you what he said he wanted?

A. He said he wanted 7 days.

Q. Without bidding?

A. He said he wanted first run in the city of Los Angeles, that is what he first said, and I wouldn't give it to him.

Then he wanted to run day and date with Inglewood, and I said, "Well, all right, if you want to run day and date with Inglewood, you are in the same area. I will let you bid the same as they bid in Inglewood."

That's the conversation as I remember.

Mr. Mitchell: All right. Returning to this letter which was just identified and which has been admitted in evidence as defendant Loew's Exhibit D-3, I would like to read it [540] now, your Honor.

The Court: All right.

Mr. Mitchell: This is on the letterhead of Metro-Goldwyn-Mayer, office of George A. Hickey, dated August 31, 1950, to Mr. Marco Wolff, Fanchon & Marco, Inc., 6838 Hollywood Boulevard, Los Angeles 28, California.

(Testimony of George A. Hickey.)

“Dear Marco:

“Confirming our conversation in my office yesterday, we shall be glad to grant you, if you so desire, the opportunity of bidding competitively for exhibition of our product between your Paradise Theatre and the first run theatres in Inglewood, California, for an availability of 7 days after Los Angeles first run closing.

“We shall await word from you before proceeding further in the matter.

“Kindest regards,

“Sincerely,

“George A. Hickey.”

Mr. Corinblit: May we have the date on that again, counsel?

Mr. Mitchell: That is August 31, 1950.

Mr. Corinblit: Thank you.

Q. (By Mr. Mitchell): Now, commencing in September, 1950—this was after the opening of the Paradise, right? [541] A. Yes.

Q. On the picture *Life of Her Own*, to whom were requests for bids sent?

A. They were sent to the Paradise, La Tijera, United Artists, Fox, Fifth Avenue, and Academy.

Q. And which theatres put in bids?

A. The Paradise, La Tijera, United Artists, and Academy. [542]

Q. And which theatre won the bid?

A. The Academy.

Mr. Corinblit: Just a minute, counsel. I take the question is taken from the document to which

(Testimony of George A. Hickey.)

theatre was the picture awarded. Is that the question? Your question was to which theatre the picture was awarded, is that right?

Mr. Mitchell: Yes. I said: "Which theatre won the bid" is what I think I said, but they both mean the same thing. And he said, "Academy."

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): That picture is Life of Her Own? A. That is right.

Q. All right. Now, I have here a record of Loew's Incorporated. Do you recognize this record? A. I do.

Q. What is it? A. That is the bid——

Q. Bid summary? A. Bid summary, yes.

Q. Can you tell me from this record what the Academy bid?

A. Yes. The Academy bid \$4,025 guarantee, plus 70 per cent in excess of \$10,500, less cost of second feature.

Q. What did the Paradise bid? [543]

A. The Paradise bid 14 days, 40 per cent of the gross, less cost of second feature.

Q. Well, the Academy bid 14 days, too?

A. 14 days.

Q. And that means they will play the picture 14 days? A. Yes.

Q. Which is the best bid?

A. Oh, the Academy, of course.

Q. All right. Now, the next picture is Toast of New Orleans. To whom were requests for bids sent?

(Testimony of George A. Hickey.)

A. The Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Who put in bids?

A. United Artists and Fifth Avenue.

Q. Who won the bid? A. United Artists.

Q. All right. The next picture is Right Cross.
To whom were requests for offers sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Who put in bids?

A. United Artists and Fox.

Q. And who won the bid? A. Fox.

Q. The next picture is Devil's Doorway. [544]

A. Paradise,——

Q. These are the ones to whom requests for bids were sent? A. That is right.

Q. All right.

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres submitted offers?

A. United Artists and the Fox.

Q. Which theatre won the bid?

A. United Artists.

Q. The next picture is Next Voice You Hear.
To which theatres were requests for offers sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres put in bids?

A. Paradise, United Artists and Fifth Avenue.

Q. Which theatre won the bid?

A. Fifth Avenue.

Q. What did the Fifth Avenue bid?

(Testimony of George A. Hickey.)

A. The Fifth Avenue——

Q. By reference to the bid records.

A. The Fifth Avenue bid 7 to 14 days. That means they could take it off in 7 days, \$1050 guarantee for the run against first week 35 per cent to \$3000, 66 $\frac{2}{3}$ over, [545] less cost of second feature and give aways.

Playing time in excess of 7 days percentage sliding scale see attached, less cost of second feature and give aways.

Run will be continued 14 days so long as daily gross equals or exceeds 300 per tenth.

Q. Now, from the Fifth Avenue you got a guarantee and what does this mean, 35 per cent to \$3000?

A. Well, it means that you get 35 per cent up to \$3000 and then if you go over that you get 66 $\frac{2}{3}$ over.

Q. All right. Now, what did the Paradise bid?

A. The Paradise bid 7 days, 35 per cent less the cost of the second feature.

Q. What is the better bid?

A. Why, this here, of course.

Q. You are pointing to——

A. Fifth Avenue.

The Court: Now, may I interrupt for just a moment.

You used a new term. I think you should tell the jury what you mean. What do you mean by "give away?"

The Witness: Well, you see a theatre, some of them give away dishes.

(Testimony of George A. Hickey.)

The Court: Automobiles.

The Witness: And some of them give away automobiles, yes.

And they take the cost of that automobile or those [546] dishes and they add it to their expenses.

Now, if there is an automobile given away, they divide that into about 25 or 30 theatres, and so much would be allotted to each theatre to make up the \$3000 or \$4000 or whatever they paid for it.

If this theatre was charged up with \$300, why, they would put that in and if another theatre was capable of doing a lot more business, why, they might make him take \$800. And another one \$100 and another one \$125 and another one \$150 and so on until they made up the whole \$4000 or \$3000 or whatever it might be.

And that is what they mean by "give aways."

The Court: The cost of the give away is added to the expense of running the theatre?

The Witness: That is right.

Q. (By Mr. Mitchell): The expense of running the theatre has something to do with this sliding scale?

A. Oh, yes. Most exhibitors—they put a profit in their sliding scale and that is the reason we don't like some of those sliding scales, and that is the reason we have so much trouble with exhibitors, because when we play on a sliding scale, the sliding scale generally starts at 25 per cent and the exhibitor will tell you that his break-even figure is 25 per cent, but it is not the break-even figure. They

(Testimony of George A. Hickey.)

have got a profit in there. They have got a profit and [547] we have got nothing, see.

The Court: Then it is a contest, is it, between the distributor and the exhibitor?

The Witness: That is correct, sir.

Q. (By Mr. Mitchell): All right. The next picture after the Next Voice You Hear is the picture called Miniver Story.

A. Well, the ones that bid on that was the Paradise, La Tijera——

Q. I want the ones to whom requests for bids were sent.

A. That is what I meant, I am sorry. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which ones bid?

A. The Paradise bid, the La Tijera and United Artists and the Fox.

Q. Which one won the bid?

A. La Tijera got the bid.

Mr. Westbrook: There are two on one sheet there.

Mr. Mitchell: Oh, yes, I see. All right.

Q. Now, the La Tijera bid what?

A. Well, the La Tijera bid 7 days, 40 per cent for the first five-tenths, 35 per cent for the second five-tenths, less cost of second feature.

"Will hold over as long as gross equals or exceeds 300 per tenth." [548]

Q. Now, these tenths are what? Somebody explained here that it was the weekend or the entire

(Testimony of George A. Hickey.)

week being divided into ten parts? A. Yes.

Q. With most of the tenth accounted for by Saturday and Sunday. A. That is correct.

Q. Now, that is 40 per cent of the first five-tenths and 35 per cent of the second five-tenths?

A. Yes. Let me explain to you what "tenths" mean. I think it is important.

Q. All right.

A. Monday, Tuesday, Wednesday and Thursday is one-tenth of the week.

The Court: Each day is one-tenth?

The Witness: Each day—Monday, Tuesday, Wednesday, Thursday and Friday, one-tenth. Saturday is two and Sunday is three. That makes up the ten tenths.

Q. (By Mr. Mitchell): All right. On the Mini-ver Story the La Tijera wins the bid with 40 per cent for the first five-tenths, 35 per cent for the second. What did the Paradise bid?

A. The Paradise bid 7 days, 35 per cent less cost of second feature.

Q. Which is the better bid? [549]

A. Why, the La Tijera.

The Court: Now, Mr. Hickey, these bids say "less cost of second feature."

As a general rule, the second feature is sold upon a flat basis, \$25, \$50 or \$100?

The Witness: That is correct.

The Court: As a general rule.

The Witness: And in some of these we found—in some of these we found, some of these where

(Testimony of George A. Hickey.)

the exhibitor—when we sell a picture flat, some of the exhibitors will take a figure—we will take a figure and say “We will sell it at \$500”, and they say, “That is more than we ever paid for anything,” but when we get one of these things, where they say “Less cost of second feature,” they take, oh, \$300 and say, “I had to pay \$800 for that.”

Q. (By Mr. Mitchell): It is a hard life, Mr. Hickey. All right. The next picture is *To Please The Lady*. From whom were bids requested?

A. The bids were requested from the Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Who put in bids?

A. Paradise, La Tijera, United Artists and Fifth Avenue.

Q. Who won the bid? A. Fifth Avenue.

Q. I have trouble with these things.

A. We have trouble with them all the time.

Q. All right. Fifth Avenue wins the bid on *To Please The Lady*. What kind of bid?

A. Well, they bid 21 days including Thanksgiving Day, \$3825 guarantee plus 70 per cent in excess of \$9,500, less cost of second feature and give away.

Q. What did the Paradise bid?

A. The Paradise bid 7 days less cost of second feature.

Q. Which was the better bid?

A. Why, the Fifth Avenue, of course. Thanksgiving Day is as good as any three days.

(Testimony of George A. Hickey.)

Q. All right. The next picture is King Solomon's Mines. To whom were requests for bids sent?

A. The Paradise, the Academy, La Tijera, United Artists, Fifth Avenue and Fox.

Q. And which theatres made bids?

A. Paradise, La Tijera, United Artists and Fifth Avenue and the Fifth Avenue got the picture.

Q. All right. Now, on King Solomon's Mines, what did the Fifth Avenue bid?

A. Well, the Fifth Avenue bid 14 to 21 days if available on or before Christmas Day. Playing time, including Christmas Day, New Year's Even and New Year's Day, \$5100 guarantee against 50 per cent to \$12,000, and 75 per cent [551] thereafter, less cost of second feature and give aways.

Q. All right. What did the Paradise bid?

A. The Paradise bid 14 days, 50 per cent of the gross less cost of second feature and if—or——

Q. If any.

A. Or Gone With The Wind. Terms of 70 per cent for two weeks.

Q. With a guarantee?

A. With a guarantee that the theatre receive ten per cent of the gross as profit.

I wish somebody would give me a profit.

Q. Which is the better bid?

Mr. Corinblit: May I have the last statement, please?

(Statement read as follows: "I wish somebody would give me a profit.")

(Testimony of George A. Hickey.)

Q. (By Mr. Mitchell): Which is the better bid, the Paradise or the Fifth Avenue?

A. Why, the Fifth Avenue.

Mr. Corinblit: As I understand it, the Paradise bid was 70 per cent of the gross?

Mr. Mitchell: That isn't quite what the Paradise bid was. He wants you to read him the Paradise bid again.

The Witness: 14 days, 50 per cent of the gross less cost of second feature, if any, or *Gone With The Wind*, terms 70 per cent for two weeks. [552]

The Court: What do you mean?

Q. (By Mr. Mitchell): With a guarantee that the theatre receives ten per cent of the gross as profit.

A. Now, that makes it a bad bid.

The Court: What do you mean by *Gone With The Wind*? How did *Gone With The Wind* get into this picture?

The Witness: Well, you see we sold *Gone With The Wind*, your Honor, on 70 per cent of the gross and guaranteed the exhibitor that he would receive ten per cent of the gross as profit. In other words, we guarantee him a profit because we knew that that picture was a terrific picture and would give him a profit, so we guaranteed it.

Q. (By Mr. Mitchell): What does that do to the bid here on *King Solomon's Mines*? Do you think guarantee of ten per cent is a good bet for the distributor?

A. I do not know—for the distributor?

(Testimony of George A. Hickey.)

Q. Yes.

A. No, I wouldn't say so.

Q. Without the guarantee the Paradise was willing to bid what per cent?

A. 50 per cent, 14 days, 50 per cent of the gross less cost of second feature.

Q. And without any guarantee the Fifth Avenue gives you a guarantee of how many dollars?

A. \$5100. [553]

Q. And then what kind of percentage?

A. 50 per cent to \$12,000 and 75 per cent thereafter, which makes it a much better bid. We are sure of \$5100.

Q. All right. The next picture is Dial 1119. To whom were requests for bids sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue and Academy. [554]

Q. And who sent in bids?

A. United Artists and Fox.

Q. Who won the bid? A. Fox.

Q. The next picture is Two Weeks With Love. To whom were requests first sent?

A. Paradise, La Tijera, United Artists, Fox, Fifth Avenue, and Academy.

Q. Who sent in bids?

A. Paradise and the United Artists.

Q. Who won the bid? A. United Artists.

Q. All right. What did the United Artists bid for Two Weeks With Love?

A. The United Artists bid \$2,750 guarantee for

(Testimony of George A. Hickey.)

14 days, the first week 50 per cent to \$5,050, and 65 per cent less cost of second feature.

Q. It is then 65 per cent?

A. Then 65 per cent less cost of second feature.

Second week 35 per cent to \$4,250, then 65 per cent less cost of second feature.

The Paradise bid 14 days, first week 40 per cent, second week 30 per cent, less cost of second feature, and the letter stated when he sent in his bid that he wanted clearance over the La Tijera Theatre.

Q. All right. Which was the best of those two bids? A. Oh, the United Artists, of course.

Q. Now, that bid request was sent out December 11, 1950, is that correct? A. That's right.

The Court: It appears from your exhibit that after that date no other requests for bids were sent to the Paradise.

Mr. Mitchell: That is what we are coming to, that's right.

The Court: All right.

Q. (By Mr. Mitchell): Do you recall having a conversation with Mr. Schreiber in the neighborhood of December, 1950 with respect to what availability he wanted? A. Yes.

Q. I will show you a memorandum which is marked Defendant Loew's Exhibit E-3——

Mr. Mitchell: I don't know whether you have seen these. Well, I know you have seen them at some time.

Mr. Corinblit: I would like to see them if you are using them.

(Testimony of George A. Hickey.)

Mr. Westbrook: I can provide him with copies.

Mr. Mitchell: All right.

Q. (By Mr. Mitchell): —which is a memorandum from Mr. Aspell to Mr. Ed Urschel, which is directed also to your [556] attention, and ask you whether that helps you fix the date of this conversation with Mr. Schreiber.

Mr. Corinblit: Your Honor, just for the sake of procedure, could we have the question first as to what the date was, and then the question of refreshing recollection, because there isn't a thing in this document which refers to the date.

Mr. Mitchell: The document is dated.

Mr. Corinblit: There is no question whether or not Mr. Hickey remembers the date. I think what is happening is Mr. Hickey is reading the document and working it into the dates.

The Court: He has a right to read the document to refresh his memory.

Mr. Corinblit: He had not stated prior thereto, your Honor, that he didn't have a memory on the subject.

The Court: Do you remember the question?

Q. (By Mr. Mitchell): I want to know the date when you talked to Mr. Schreiber about it.

A. Well, it was around that date. I don't remember the exact date.

Q. I know, but you can tell from the memorandum about when it was. The memorandum is dated December 12, 1950. Now, can you fix this con-

(Testimony of George A. Hickey.)

versation with Mr. Schreiber with relation to the memorandum? [557]

A. Well, it must have been around that date. It must have been around the 20th or the 18th or 19th.

Q. All right. In substance, what did Mr. Schreiber say to you in this conversation?

A. Well, he didn't want to bid any longer. He wanted to get a clearance that would be satisfactory to him. So we gave him 21 days, and he seemed satisfied.

Q. Does this memorandum which I have just shown you, Defendants' Exhibit, Loew's E-3, have anything to do with this conversation with Mr. Schreiber?

A. Yes. I discussed it—after Mr. Schreiber discussed it with me, I discussed it with my manager and so we gave him that clearance and he was satisfied with it.

Q. He went ahead and played pictures on that clearance? A. That's right.

Q. 21 days after Los Angeles?

A. That's right, and he seemed satisfied.

Mr. Mitchell: I will offer Defendants' Exhibit E-3.

Mr. Corinblit: I will object to the offer in evidence. It is a memorandum between two third parties.

The Court: That may be perfectly true, but under the rules it is admissible, is it not?

Mr. Mitchell: It is sent to Hickey's attention, among others.

(Testimony of George A. Hickey.)

The Court: Was this memorandum made at about that [558] date, 12/20/50?

The Witness: Yes.

The Court: Was it kept in the files of Metro-Goldwyn-Mayer?

The Witness: Yes.

The Court: Was it customary to make memorandums like this?

The Witness: Oh, yes. We always made memorandums of exhibitors that come in when we were having a discussion or dispute about anything. Not only that but when some of them come in my office, the minute they leave I call my secretary and I have her write down everything that was said and I put it away.

Mr. Corinblit: Your Honor, this is the problem. It is true there is a rule of law which permits records in the ordinary course of business to be admitted under the business records rule, depending upon the party offering, but you do not have the ordinary rule providing that self-serving statements may be offered by a party.

The Court: I disagree with you. All you have to do is show it is kept in the ordinary course of business and made at the time of the transaction and it is admissible.

Mr. Corinblit: Your Honor, that would permit a large organization to create its own records.

The Court: That may be perfectly true, but it has [559] been admissible time after time.

Mr. Corinblit: We will object to it on that ground, your Honor.

(Testimony of George A. Hickey.)

The Court: Overruled. But may I ask a question? Who is T. J. Aspell, Jr.?

The Witness: He is my manager there in the office.

The Court: It may be received in evidence.

The Clerk: Loew's Exhibit E-3.

(The exhibit referred to was received in evidence and marked as Defendant's Loew's Exhibit E-3.)

The Court: Do you want to read it to the jury?

Mr. Mitchell: Yes. I am going into another document, so may I read it from here?

The Court: Yes. [560]

* * * * *

Q. (By Mr. Mitchell): After these December discussions or this discussion between you and Mr. Schreiber, did you then serve him on a 21-day availability? A. I did.

Q. Serve Mr. Schreiber? A. I did.

Q. The Paradise Theatre? A. Yes.

Q. Did you send him bids for the 7 day availability? A. I did.

Q. Maybe you'd better look. Let's take Pagan Love Song where you sent out bids on December 20, 1950. To what theatres did you send requests for bids?

A. We sent the La Tijera, the United Artists, the Fox, Fifth Avenue, the Academy. We didn't send him.

Q. What theatres bid? A. Fifth Avenue.

Q. Only? A. Only Fifth Avenue.

Q. And to whom did you award the bid?

(Testimony of George A. Hickey.)

A. To Fifth Avenue.

Q. The next picture on January 2, 1951, was Mrs. O'Malley and Mr. Malone. To what theatres did you send requests or offers on that picture?

A. La Tijera, United Artists, the Fox, Fifth Avenue and Academy.

Q. What theatres sent in bids?

A. La Tijera, United Artists and Academy, and La Tijera got it.

Q. The next picture, Grounds For Divorce, on which requests for bids were sent out January 6, 1951, to which theatres did you send requests for offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And which submitted offers?

A. La Tijera, United Artists and Fifth Avenue.

Q. Which theatre won the bid?

A. La Tijera.

Q. The next picture on which requests for bids were sent out on the same day, Watch the Birdie, which theatres were requests sent?

A. La Tijera, United Artists, Fox, Fifth Avenue and [563] Academy.

Q. Which theatres bid?

A. La Tijera, United Artists and Academy, and La Tijera got it.

Q. The next picture, January 19, 1951, request for bids were sent out for Kim, and to whom were requests sent?

A. La Tijera and United Artists, Fox, Fifth Avenue and Academy.

(Testimony of George A. Hickey.)

Q. Which theatres made offers?

A. La Tijera, the United Artists and the Fifth Avenue.

Q. And which theatre won the bid?

A. United Artists.

Q. The next picture was Magnificent Yankee, for which requests for bids were sent out on January 25, 1951, to which theatres?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatre won the bid?

A. The Academy——

Q. Excuse me. Which theatres made a bid?

A. The Academy.

Q. And did you award it to the Academy?

A. No. We negotiated a deal and we awarded it to the United Artists.

Q. That is, you rejected the Academy bid? [564]

A. We rejected all the bids and renegotiated, the same as we do in lots of situations. [565]

Q. The next picture Cause For Alarm. Requests were sent out on February 6, 1951. To which theatres requests sent?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres made bids?

A. Fifth Avenue and Fifth Avenue got it.

Q. The next picture Three Guys Named Mike, February 20, 1951. To which theatres were requests for offers sent?

(Testimony of George A. Hickey.)

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And which theatre submitted an offer?

A. United Artists and United Artists got it.

Q. The next picture Vengeance Valley, February 20, 1951. To which theatres did you send requests for offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which theatres made offers?

A. United Artists and Fifth Avenue.

Q. Which theatre got the bid?

A. Fifth Avenue.

Q. The next picture is Royal Wedding, March 10, 1951. Which theatres did you request offers from?

A. La Tijera, Fox, Fifth Avenue and Academy.

Mr. Westbrook: Mr. Hickey, will you speak up a little [566] bit. I think his voice is dropping.

The Witness: I am getting a little hoarse.

Q. (By Mr. Mitchell): Which theatre made offers? A. United Artists and the Fox.

Q. Which theatre got the bid?

A. United Artists.

Q. All right. The next one is Inside Straight, March 10, 1951.

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. Which ones made offers?

A. United Artists and Academy.

(Testimony of George A. Hickey.)

Q. Which one got the bid?

A. United Artists.

Q. The next one is Father's Little Dividend. The same theatres you sent offers to?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And the ones who submitted offers?

A. United Artists and Fifth Avenue and the United Artists got it.

Q. The next one is—well, before we come to the next one let me show you a letter, defendant Loew's Exhibit G-5, a letter from Syd Lehman to Thomas J. Aspell, Jr.

Have you seen this letter before? [567]

A. Yes.

Q. Was it called to your attention at the time?

A. Yes, sir.

Q. Who is Syd Lehman?

A. He is the buyer for the Paradise.

Q. After Marco ceased being the buyer?

A. That is correct.

Mr. Mitchell: I will offer this letter in evidence, you Honor.

Mr. Corinblit: Your Honor, I have the same objection. It is outside the scope of the direct examination. May I have a continuing objection to this sort of evidence?

The Court: Yes, the same objection and the same ruling. It will be admitted in evidence.

Mr. Mitchell: May I read the letter in evidence?

(Testimony of George A. Hickey.)

The Clerk: Will you let me mark it, please?

Loew's Exhibit G-5 in evidence.

(The document referred to was marked Defendant's Loew's Exhibit G-5 and received in evidence.)

Mr. Mitchell: Before I read it, Mr. Hickey, I will show you a letter dated April 9, 1951, apparently in reply to this letter. It is from Mr. Aspell to Mr. Lehman and I will ask you if you have seen that letter before. A. Yes.

Q. And that was sent by Loew's or by Aspell?

A. Aspell, yes.

Q. Did he discuss it first with you?

A. They have to discuss everything like that with me.

Mr. Mitchell: I will offer in evidence this letter which is marked Defendant Loew's Exhibit G-12.

Mr. Corinblit: Same objection.

The Court: Same objection, same ruling, and received in evidence.

(The document referred to was marked Defendant Loew's Exhibit G-12 and received in evidence) [569]

* * * * *

Q. (By Mr. Mitchell): Did you ever have any requests thereafter from Mr. Lehman or from the Paradise Theatre for the right to a 7-day run [571] on bid? A. No, I don't think we did.

Q. He speaks of Born Yesterday. That picture is a picture of what company?

(Testimony of George A. Hickey.)

A. Born Yesterday?

Q. Do you remember that?

A. Might be one of ours. We had a lot of them.

Q. Do you remember that being a Columbia picture with Judy Holliday?

A. I don't remember.

Q. Or don't you ever see any pictures?

A. I don't remember those pictures.

Q. All right. I think we left off, then, in March.

The next picture that you offered was Painted Hills. You offered it to whom?

A. We offered it to the La Tijera, United Artists, Fox, Fifth Avenue and the Academy.

Q. Did you get any bids? A. No.

Q. Get any play? A. I don't think so.

Q. Was that one of your good pictures?

A. That was one of those problems we had.

Q. All right. The next one was on April 12, 1951, Soldiers Three. From whom did you ask offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. From whom did you get any bids?

A. United Artists.

Q. And you awarded it to United Artists?

A. That is correct.

Q. Now, before we go to the next one I will show you a letter dated May 4, 1951, from Mr. Lehman to Mr. Aspell. Have you seen that before?

A. Yes, I have seen that letter before.

Q. And the reply dated May 18, 1951?

(Testimony of George A. Hickey.)

A. Yes, I have seen that.

Q. Mr. Lehman's letter was received and Mr. Aspell's letter was sent at that time?

A. That is right.

Mr. Mitchell: I will offer in evidence Mr. Lehman's letter of May 4, 1951, which is marked Defendant Loew's Exhibit G-16.

Mr. Corinblit: Same objection.

The Court: Same ruling.

The Clerk: Loew's Exhibit G-16 in evidence.

(The document referred to was marked Defendant Loew's Exhibit G-16 and received in evidence.) [573]

Mr. Mitchell: I will offer in evidence Mr. Aspell's reply dated May 18, 1951, which is marked Loew's Exhibit G-20.

Mr. Corinblit: Same objection.

The Court: Same ruling.

The Clerk: Loew's Exhibit G-20.

(The exhibit referred to was received in evidence and marked as Defendant Loew's Exhibit G-20.) [574]

* * * * *

Q. (By Mr. Mitchell): Did Mr. Schreiber then request the right to the 7 day run on a bid?

A. Yes. He asked me for a 7 day run, but he didn't want to bid.

Q. He was not willing to bid?

A. He was not willing to bid.

Q. Did he ask you to send him bid offers?

(Testimony of George A. Hickey.)

A. No.

Q. All right. Then the next picture on May 8, 1951, Go For Broke, to which theatres did you send requests for offers?

A. La Tijera, United Artists, Fox, Fifth Avenue and Academy.

Q. And which theatres put in bids? [576]

A. United Artists and the Fifth Avenue. The United Artists got the picture.

Q. The next is Home Town Story. You sent requests for bids to those same theatres which you named before?

A. Yes, La Tijera——

Q. We will save your voice, Mr. Hickey.

A. All right.

Q. Did you get any bids? A. None.

Q. What did you do with the picture?

A. We negotiated a deal in the Fifth Avenue.

Q. The next picture is The Great Caruso. You sent out offers to bids to those same theatres?

A. Yes.

Q. Which ones bid?

A. La Tijera, United Artists and Fifth Avenue.

Q. Which one won the bid?

A. United Artists.

Q. The next picture, No Questions Asked, you sent our requests to bids to the same theatres?

A. Same theatres?

Q. Which theatres bid? A. United Artists.

Q. Did you award it to United Artists?

A. No. We didn't like the bid, so we turned it

(Testimony of George A. Hickey.)

down, [577] and we negotiated a deal with the La Tijera.

Q. That is Bill Kupper's theatre?

A. Yes.

Q. The next one is Excuse My Dust. You sent out requests for offers to the same theatres?

A. Yes.

Q. Which one made offers?

A. United Artists and Fifth Avenue.

Q. Which one got the bid?

A. United Artists.

Q. The next picture is Showboat. We are now at June 28, 1951. You sent requests for offers to the same theatres? A. Same theatres.

Q. Had Mr. Schreiber by that time requested the right to bid in the Inglewood area?

A. No.

Q. Which theatres made bids?

A. United Artists and Fifth Avenue.

Q. Which theatre got the bid?

A. Fifth Avenue.

Q. The next picture was Theresa on June 28, 1951, for which you sent requests for offers to the same theatres? A. Yes.

Q. Which theatres bid?

A. United Artists and Fifth Avenue. [578]

Q. Which one won the bid?

A. Fifth Avenue.

Q. The last picture on this schedule, on June 2, 1951, request for offers were sent to the same thea-

(Testimony of George A. Hickey.)

tres? A. Same theatres.

Q. Which theatres bid?

A. United Artists and Academy.

Q. Which one won the bid?

A. United Artists.

Q. I would like to go back to the subject matter of first run Los Angeles for a minute, not Inglewood, but first run Los Angeles. You have told me that Mr. Schreiber requested the right to play first run Los Angeles day and date with the showcase theatres, do you recall that? A. That is true.

Q. Did any other suburban theatres ask you for this right?

A. Yes. We had requests of that type from the Picwood Theatre, we had the Meralta Theatre in Culver City, and the Southside Theatre.

Q. Just a minute. The Picwood is in Westwood?

A. The Picwood is in Westwood, yes.

Q. And the Meralta in Culver City?

A. Culver City.

Q. You mentioned the Southside, over here [579] just outside of Inglewood (indicating).

A. Yes.

Q. Can you remember any others?

A. Yes. We had—let me think a minute. We had other requests.

Q. To save time, let me refresh your recollection. How about the La Tijera?

A. The La Tijera, they also asked, when they built that theatre, for first run, too.

(Testimony of George A. Hickey.)

Q. First run Los Angeles?

A. Yes, day and date with Loew's State and Hollywood.

Q. How about the Baldwin Theatre, Fanchon & Marco's theatre?

A. The Baldwin Theatre asked me two or three times for the same run.

Q. What about the Rio?

A. I don't remember whether the Rio did or not. I know the Baldwin did.

Q. How about Bard's Adams?

A. Bard's Adams asked me, yes.

Q. How about Manchester?

A. Manchester asked me.

Q. That is another theatre of Marco?

A. Marco, yes. He asked me for both the Southside and the Manchester. [580]

Q. How about the Crown over in Pasadena?

A. The Crown asked me, yes, the Crown in Pasadena.

Q. What was your reply to these requests?

A. The same reply that I made to the Paradise, that we didn't have any 7 day runs, and my answer was the same to all of them in the city of Los Angeles for the same reason, which I could repeat if I want to go all over it again.

Q. No. You have told us why you refused it to the Paradise. It was the same reason?

A. The same reason.

Q. You would not play these suburban theatres

(Testimony of George A. Hickey.)

day and date with the downtown and Hollywood theatres?

A. That is true. We wanted to get, to have a show case in the city, and we wanted one in Hollywood, and we wanted one downtown, and we wanted one downtown, and we wanted to properly advertise our pictures.

You know, when you advertise your pictures, such as we do, in the city of Los Angeles and in all the magazines in the country, we spend—for instance, we will take an inside page, a colored page in the Saturday Evening Post. One issue cost us \$18,000.

We will take an ad in five papers in Los Angeles that cost us \$50 an inch.

Well, now, you know, you try to get space such as we do on television, and it costs us to advertise a picture a week on television \$15,000. It all depends on where you get [581] your minute or your minute and a half on television. If you get it at 8:00 o'clock at night right ahead of a news broadcast, it will cost you more, and if you don't get it in the good spots, it is no good to you.

When you spend \$15,000 on television, then you spend another \$10,000 in the newspapers, and then you spend another \$10,000 to \$12,000 having a premiere, such as we do on our big pictures and you can't afford to let a lot of houses run on first run with that kind of advertising and that kind of money being spent. [582]

(Testimony of George A. Hickey.)

It is nothing for us to spend a half million dollars in the magazines in this country. Well, now, they go in to all these homes. To say nothing of what we spend here. It is nothing to spend \$1,000,000 on a picture in advertising and we have got to get that money back. We can't let the exhibitors hurt us on that. We can't do it. It is impossible. We wouldn't be in business if we did it.

Q. You try to sell the pictures the way in your best judgment they should be sold?

A. That is correct.

Q. In discussing selling pictures in Los Angeles in 1950 and 1951, when the Paradise Theatre was opened, were you engaged in any combination, conspiracy, or did you have any deal or understanding or agreement with any of the other distributors?

A. We have no agreements with anybody because we have trouble enough taking care of our own business.

Q. Did you have any deal, understanding, combination, conspiracy or agreement other than your film licensing agreements, with any exhibitor such as Fox West Coast or United Artists Theatres Circuit or any other exhibitors? A. No.

Mr. Mitchell: That is all, your Honor.

Mr. Johnston: I have no questions, your Honor.

Redirect Examination

Q. (By Mr. Corinblit): Mr. Hickey, I think you stated about four times in the examination by Mr. Mitchell—— A. I can't hear you.

(Testimony of George A. Hickey.)

Q. I am sorry. I think you stated about four times in the examination by Mr. Mitchell, a number of reasons why Loew's Incorporated, why you took the position that you would refuse to let the Paradise Theatre, or for that matter any other independent theatre, have Loew's pictures on a first run basis. And I think you said one of the reasons was that you have to advertise your products properly. Is that right?

A. I said that we had to have two showcases in order to advertise them properly and make them worthwhile for the others exhibitors that run afterwards and that is the truth.

Q. And when you said that you had to have them, what you meant was that from an economic point—you were telling the jury that it was your position in fact that economically that was required as far as Loew's was concerned, is that it?

A. That was what?

Q. You were telling the jury when you said that you had to have only two theatres, that economically, as a matter of business decision, Loew's had to operate that way. Is that what you were saying to the jury? [584]

A. In our opinion that is the proper way to handle our business.

Q. And I think you also said that—I will withdraw that question.

Now, it is true—it is true that prior to 1950, prior to 1950 as you have testified before, the only

(Testimony of George A. Hickey.)

theatres that you would permit to play your pictures were Fox theatres. Now, we have gone through that. A. I did not say that.

Mr. Mitchell: That has been asked and answered more than four times.

The Witness: I did not say that.

The Court: Just a minute. If there is an objection, you shouldn't speak until after the objection has been heard.

What is the objection?

Mr. Mitchell: My objection was that the question has been asked and answered at least four times heretofore and it is not proper re-cross either. I didn't ask him anything about any period prior to 1950. I tried to stay within the issues in the complaint.

The Court: I think that has been gone into before.

Mr. Corinblit: I want to say from the standpoint of expanding the scope of the examination of this witness, I pointed out Mr. Mitchell has gone into a great number of matters which I don't believe I touched on at all. That is [585] why I wanted to lay the foundation here again. I will withdraw the question if your Honor feels it is not proper.

Mr. Mitchell: May we see what you are going to show the witness?

Mr. Corinblit: Yes, certainly. These are newspaper ads, counsel.

(Testimony of George A. Hickey.)

Mr. Mitchell: I am not blind. I am getting old but not blind.

Q. (By Mr. Corinblit: I want to show you——

Mr. Massey: Have those been marked, counsel?

Mr. Corinblit: No.

The Court: Better have them marked.

Mr. Corinblit: We will mark them Plaintiff's Exhibit next in order for identification.

The Clerk: 50 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit 50 for identification.)

Q. (By Mr. Corinblit): Newspaper ads in the Times dated November 23, 1955.

The Court: 1955?

Mr. Corinblit: Yes.

Q. Mr. Hickey, I will show you——

Mr. Mitchell: Before we get into that and anything is read to the jury, your Honor, on the date proposition, I want to have an objection before he does that. [586]

The Court: All right.

Q. (By Mr. Corinblit): Mr. Hickey, I want to show you Plaintiff's Exhibit 50 for identification, and I have here a year's full of newspaper ads for the years 1955 and 1956, which I will be glad to show to you as well, and ask you to examine this and tell me in the light of what you see, whether or not it doesn't refresh your recollection that in fact there was no reason in 1950 or 1951 why you should refuse to license the Paradise on an equal

(Testimony of George A. Hickey.)

availability with the downtown theatres. Does that refresh your recollection in any way?

A. I don't understand what you mean.

Q. Well, you testified that as far as Loew's was concerned that is was required, it was necessary for Loew's to play in two theatres—the Loew's State and the Egyptian for the most part, and to refuse the Paradise the right to play on an equal availability—that it was necessary.

Now, I ask you in examining Plaintiff's Exhibit 50, and I will be glad to show the last year's newspaper reports, does that refresh your recollection that in fact you knew in 1950 that it was unnecessary to refuse the Paradise day and date with downtown and with the Loew's State and with the Egyptian?

A. No, I didn't know any such a thing.

You are talking about a multiple run. I [587] don't know what you are talking about.

Q. Well, what do you know about multiple runs—that is, what do you know about the policy of playing——

A. What question are you asking me?

Q. I asked you, Mr. Hickey, whether or not, looking at this newspaper ad and looking, if you want to, at the last year's ads, whether that refreshes your recollection that in fact in 1950 and 1951 there was no reason for Loew's refusing the Paradise Theatre to play day and date first run except that you were in collusion with the other exhibitors in the area?

(Testimony of George A. Hickey.)

A. I beg your pardon, we were not in collusion with anybody.

Q. This does not refresh your recollection in that regard?

A. Yes, sir,—I don't know what answer—I don't know what you want to find out.

The Court: I don't know how you can ask the witness if it refreshes his recollection.

Now, if you want to, you can establish the fact that some time after 1951 Loew's changed its policy and had a multiple first run in Los Angeles and you can argue to the jury if you want to that that is some evidence that it wasn't necessary in 1951.

Mr. Corinblit: Very well, your Honor. [588]

The Court: I don't know how it refreshes the witness' memory.

Mr. Mitchell: I think the witness should be permitted to explain why Loew's changed its policy.

The Court: There is no question before the court. The only question was "Does it refresh your memory?"

Mr. Corinblit: All right.

Q. Now, Mr. Hickey, the fact is, is it not, and you know this, that this last year's group of newspaper ads would show that Loew's Incorporated pictures in the city of Los Angeles are playing in at least nine or ten theatres in this Los Angeles area, isn't that correct? A. That is correct.

The Court: Now, wait a minute. You mean day and date with Los Angeles downtown?

(Testimony of George A. Hickey.)

Mr. Corinblit: Yes, day and date with Los Angeles.

The Court: Then say so.

Mr. Mitchell: Can he explain why, your Honor?

The Court: At the proper time he can explain why.

Mr. Corinblit: Thank you, your Honor.

Q. Now, among the theatres that under Loew's policy are playing day and date——

The Court: Now?

Mr. Corinblit: Now. Are included the United Artists in Pasadena, correct? [589]

The Witness: I believe so.

Q. (By Mr. Corinblit): Are included the United Artists in Inglewood, correct?

A. I am not so sure about that.

Q. You are not sure about that?

A. No.

Q. All right.

A. It may. I am not sure about it, though.

Q. Are included the Pantages Theatre in Hollywood, is that right? A. Sometimes.

Q. That is the theatre that you said was not such a good showcase theatre?

A. That is right. [590]

Q. And including the RKO Hillstreet Theatre downtown, isn't that right?

A. The RKO Hillstreet? Once in a while, not very often.

(Testimony of George A. Hickey.)

Q. All right. Including the Village Theatre in—— A. In Westwood.

Q. ——in Westwood. That is correct, isn't it?

A. That is correct.

Q. Including the Fifth Avenue Theatre in Inglewood, is that correct? A. That's right, yes.

Q. Including the Studio City here (indicating), is that right? A. Studio City?

Q. Studio City Theatre.

A. Yes, that's right.

Q. Including the United Artists Theatre in East Los Angeles, isn't that correct?

A. That's right.

Q. That is in this area. I think we mentioned United Artists in Pasadena, in this area (indicating).

And including the Cornell Theatre in Burbank, isn't that right?

A. Not every often, but we do play it.

Q. Including the Picwood Theatre out here, isn't that [591] correct? A. That is correct.

Q. That is the theatre that Mr. Mitchell mentioned that you refused to play day and date, isn't that correct? A. That is correct.

Q. Including the Warner's Huntington Park Theatre in Huntington Park, isn't that right?

A. Sometimes.

Q. Including the Westwood Theatre in Westwood, isn't that correct?

(Testimony of George A. Hickey.)

A. The Westwood Theatre? That is the Picwood, isn't it?

Q. It may be the Village Theatre in Westwood. That would be perhaps more accurate.

A. It could be the Village.

Q. How about the Garmar Theatre in Montebello? A. That's right.

Q. I can't locate Montebello on the map.

A. That's right.

The Court: Now, Mr. Hickey, I understand from your testimony that up to a certain date, you only played two theatres first run in Los Angeles.

The Witness: That's right.

The Court: One downtown and one in Hollywood.

The Witness: That is correct. [592]

The Court: Sometimes you changed the policy where you played more than two theatres first run in Los Angeles.

The Witness: That is correct.

The Court: Do you know when that was done?

The Witness: I don't know the exact date.

The Court: Approximately.

The Witness: Well, it was a couple of weeks before we put Guys and Dolls in the Paramount Theatre, whatever date that was.

The reason that this change come about was because the theatre set-up in the city of Los Angeles changed, and we couldn't follow what we used to do. In other words, when they took the Egyptian

(Testimony of George A. Hickey.)

Theatre away from me and put in Oklahoma for a run, and it will probably run a year or more, that broke up my combination of a theatre downtown and a theatre in Hollywood, so I had to think and worry about what we would do from there on.

So the Paramount is closed up, they are closed up now for the next five months with pictures. We can't get in there.

The Chinese run their own pictures.

The Vogue Theatre is not a good showcase, so we can't pick that to replace the Egyptian.

The Hawaii Theatre is too far down. Anything below La Brea, or anything below—well, anything below that [593] street where the Pantages is on the corner there, I think it is Highland, isn't it? Anything below the Pantages Theatre is not a good location for any first run theatre.

Women will not go down there. There is no matinees down there, and the Pantages is closed up. We can't get into the Pantages, only once in a while.

So our combination of showcases has been broken up. We can't follow that now like we used to.

I would give anything if I had a good first-class theatre in Hollywood that I could run with downtown Los Angeles, and not run any other theatres in the city at the same time, but that has been closed to me. It was forced upon me. I didn't make—I didn't choose to put Oklahoma into the Egyptian Theatre. The owner of that theatre took it away from me, and the owner of that theatre is the

(Testimony of George A. Hickey.)

United Artists, so I had no choice. They just took it from under me, so there is nothing I could do, so what am I going to do? Put my pictures on the shelf? Spend a couple of million dollars, two or three million dollars to make one, and then put it on the shelf and not seek a way out?

So the best thing that I could do is to find what they call a multiple run in order to put my pictures into a lot of theatres at one time.

I put Blackboard Jungle in the drive-ins, eleven drive-ins at one time, and got quite a nice rental out of it, [594] but it wasn't because, or it wasn't for the reason that anybody would think when you asked that question. It wasn't for that reason.

Q. (By Mr. Corinblit): Mr. Hickey, I don't—

Mr. Mitchell: Wait a minute. He is answering the court's question.

The Witness: I beg your pardon?

The Court: Go ahead.

Mr. Mitchell: I am just trying to keep you from being interrupted.

The Witness: It wasn't for that reason that we gave this multiple run, not at all. It was because we were forced to give it up, and there is no decent theatre in Hollywood, on Hollywood Boulevard, that can take the place today that is open for us of the Egyptian Theatre. There is none.

There is the Iris Theatre. It is a second-rate theatre.

(Testimony of George A. Hickey.)

There is the Hollywood Theatre, and it is a second-rate theatre.

The Fox Music Hall is a second-rate theatre.

There is nothing we can do for a multiple run.

The Hawaii Theatre is in the same bad location that the Fox Music Hall is in on Hollywood Boulevard, and the Pantages we can't get.

The Vogue is not sufficient—— [595]

The Court: Now, Mr. Hickey, you have gone over that once before and you have made your explanation. It is nearly 4:00 o'clock and I think we can leave the case with your explanation. You will probably be cross examined on that.

The Witness: I just want to say one more thing, if you will permit me, your Honor, that the Warner Bros. Theatre has been taken out of circulation and they are running Cinerama there, so there is no theatres.

The Court: You will probably be cross examined on this next week.

Mr. Corinblit: Yes, your Honor.

The Witness: I hope not. [596]

* * * * *

Q. (By Mr. Corinblit): Mr. Hickey, when we terminated last Friday, you had stated to the jury what you said were your reasons why in 1955 there was no economic necessity for confining your play-off to two theatres, while in 1950 your statement had been that there was an economic necessity and this was the excuse that you gave [602] to Mr.

(Testimony of George A. Hickey.)

Schreiber for not permitting him to play day and date first run.

The record shows, Mr. Hickey, that your statement was the reason in 1955, because you were forced to give it up. I think you stated that the combination was broken up.

Now, first I want to get clear, the combination to which you refer was the Loew's State downtown and the Egyptian in Hollywood, is that right?

A. That is correct.

Q. The way in which the combination was broken up, you stated, was that the Egyptian went into a long run of the motion picture Oklahoma and that was the reason for the break-up of the combination. That is what the record shows.

Now, Mr. Hickey, the record shows, and we have the newspapers here if you have any question about it, that the Egyptian closed on about October 5, 1955, and that it opened Oklahoma November 18, 1955.

The record is also here, and you may examine it, which shows that the first time that Loew's had the multiple day and date was 22 weeks before the Egyptian closed for the purpose of going into Oklahoma. That is in May of 1955.

Do you remember that to be a fact?

A. Yes, I remember that, but I would have to explain that.

Q. All right. Just a minute and we will give you the opportunity. [603]

(Testimony of George A. Hickey.)

Mr. Mitchell: Now, just a minute. Let him explain.

The Court: Let him explain now while the question is fresh.

Q. (By Mr. Corinblit): All right, you go ahead.

The Court: Go ahead and explain.

Mr. Corinblit: Could we get it clear on the record——

Mr. Mitchell: Counsel is testifying here, your Honor. I haven't stopped him from testifying, but having testified or argued once, I think that is enough. Can't the witness now explain his answer.

The Court: Read the question to the witness.

(Question read.) [604]

The Court: All right. Now, make your explanation.

The Witness: We knew eight or nine months before the Egyptian went into a run with Oklahoma that they were going into a long run with Oklahoma that would run a year or more.

So, during that period we were running over in our minds what we would do when Oklahoma went into the Egyptian. We didn't have a release every week at that time, so the Egyptian put in a Warner picture.

I think the name of the picture was Battle Cry. And they ran that picture six weeks. Then we put in another picture after Battle Cry and they run that six weeks.

Just at that time, when they run the last picture, I had talked to my manager and we decided then

(Testimony of George A. Hickey.)

that we would have to do something before it was too late.

So we decided we would go into a multiple run. That was the only thing that was left for us to do. There was no theatre in Hollywood that we could get to take the place of the Egyptian, so we decided to go into a multiple run.

We sent it into New York to the legal department to see if it was proper and all right legally. Then Mr. Saunders and Mr. Melniker come out to Los Angeles and we went all over it with them. Then they went back to New York and in a few days after that they notified us that it was all right to go ahead and go to the multiple as long as there was no other place to put our pictures. [605]

So we went then into the multiple. We sent out bids to everybody, including the theatre, the Paradise Theatre. They had the same right to bid that everybody else had for the multiple run.

So we opened up the multiple run with Blackboard Jungle.

Q. (By Mr. Corinblit): May I stop you there, if I may, your Honor. I want to get clear before you go on, Mr. Hickey—— A. I can't hear you.

Q. I say I want to get clear with respect to the picture Blackboard Jungle.

I think you testified, Mr. Hickey, that you couldn't get into—your statement now is that you couldn't get into any other theatre other than the Egyptian on Hollywood Boulevard, isn't that correct?

(Testimony of George A. Hickey.)

A. For a steady multiple run theatre. I mean a steady showcase theatre.

Q. And is it your testimony that you couldn't get into the Pantages Theatre?

A. No, not as a steady theatre, no. You see, when we had—when we have a showcase you have got to have a showcase with a theatre downtown and a theatre in Hollywood that can run your pictures regularly.

Q. Now, I had thought, Mr. Hickey, that you testified yesterday that there was bidding for first run downtown. [606]

A. That there was what?

Q. Bidding. A. There is.

Q. Well, then, when you bid you don't know what theatre you are going to get downtown, do you? A. That is true.

Q. And there was bidding before you went into the multiple day and date, is that right?

A. That is right, and there is still bidding. [607]

Q. So you didn't know before you went to multiple day and date what theatre you were going to get downtown, did you? A. That is correct.

Q. In Hollywood there was also bidding?

A. That's right, but I do know this—

Q. May I—

Mr. Mitchell: Let him finish his answer.

Mr. Corinblit: No.

The Court: Now, both of you can't talk at the same time. You listen to the question, and then

(Testimony of George A. Hickey.)

when the answer is being made, you allow him to make the answer.

Mr. Corinblit: Very well, your Honor.

The Court: All right. Put your question.

Mr. Mitchell: May he not finish his answer, your Honor?

The Court: Let's put the question again.

Q. (By Mr. Corinblit): When you played in Hollywood before you went multiple day and date, you also had bidding, is that right?

A. That is true.

Q. And you didn't know in Hollywood what theatre was going to get the bid first run?

A. That's right.

Q. Now, the first picture that you opened, as a matter of fact, *The Blackboard Jungle*, the theatre in Hollywood that [608] played the picture was the Pantages, wasn't it? A. Yes.

Q. Now, Mr. Hickey, with respect to this matter of show case, we want to get this one thing clear. It is undoubtedly true that when you went to multiple first run, if you were to compare a week's revenue from multiple first run to the week's revenue from the two-theatre first run, the revenue received from the multiple run far exceeds the first run revenue from a week of the two theatres, is that correct? A. No, I wouldn't say that.

Q. That is, you wouldn't say you got more money from *Blackboard Jungle* on the multiple first run than you received theretofore first week from playing in two theatres, generally?

(Testimony of George A. Hickey.)

A. On that picture, we did.

Q. I take it the arrangement here on multiple first run was 11 theatres, that is, sometimes you had as many as 11 theatres playing first run?

A. That's right.

Q. Is that correct? A. That is correct.

Q. They were spotted all around this area, correct? A. That is correct.

Q. And they included a theatre downtown just as you had included one before, correct?

A. That is correct. [609]

Q. And a theatre in Hollywood just as you had included one before, is that correct?

A. That is correct.

Q. And in addition to that, seven, eight or nine other theatres. A. That is correct.

Q. Now, I think you testified, Mr. Hickey, that one of the important things that you said was the economic reason in 1950 for refusing Mr. Schreiber the opportunity of playing day and date was word of mouth advertising, is that right?

A. That's right.

Q. Now, word of mouth advertising depends to a great extent on the number of people that see a picture in the early run, isn't that right, to some extent?

A. To some extent, but that isn't—the reason we wanted it, and I will have to repeat myself, the reason that we wanted a show case theatre downtown and a show case theatre in Hollywood is for one reason only, and that is to make our pictures

(Testimony of George A. Hickey.)

more profitable in the theatres that you might call multiple runs that run them after the show cases, because, as I said before, we spend as much money advertising a picture—more money advertising a picture, I should say, than we get out of the picture in rental in those show cases, and then after that the word of mouth and the advertising that we do, then if you put them into the multiple run, then they are [610] worth twice as much to the multiple run and other theatres that run them afterwards as they are before that.

The Court: May I ask a question?

The Witness: Yes.

The Court: When did you start the multiple run?

The Witness: I believe the multiple run—and I am not positive, your Honor—I believe that the multiple run was started on May 11, if I am correct.

The Court: In what year?

Mr. Corinblit: 1955.

The Witness: 1955.

The Court: When you decided upon multiple first run, besides downtown Los Angeles and Hollywood, you were going to put the first run picture in these other localities, how did you choose the other localities, or how did you choose the theatres?

The Witness: We didn't choose the theatres, your Honor. We sent out bids.

The Court: You sent out bids to all the theatres?

The Witness: All of them.

(Testimony of George A. Hickey.)

The Court: In Los Angeles?

The Witness: No, not all, all in the adjacent suburbs in Los Angeles, like Inglewood and Pasadena and down in the Valley, these small theatres in—Beverly Hills was not included—Redondo Beach and Inglewood and the Paradise [611] Theatre and the Loyola Theatre, all of those theatres, such theatres as that was included in the bids.

The Court: You sent out notice and they bid?

The Witness: They bid.

The Court: Then I understand, do I, that the multiple first run theatres changed from picture to picture, that is, one theatre wouldn't get the picture all of the time?

The Witness: Oh, no. It all depends on who gives us the best bid. A lot of drive-ins, they were all asked to bid, too.

The Court: For instance, let's take Inglewood, you wouldn't have one theatre in Inglewood that you gave the exclusive right to have first run pictures?

The Witness: No, sir. We didn't give anybody exclusive right. We sent the bids to every theatre in Inglewood, including the Paradise Theatre and the Loyola Theatre and everybody in that area up as far as Redondo Beach and Gardena.

The Court: So you didn't actually designate certain theatres to be first run theatres in those various districts?

The Witness: No, sir, we did not. [612]

(Testimony of George A. Hickey.)

The Court: They were selected on the bidding principle?

The Witness: That is correct.

The Court: You may proceed.

Q. (By Mr. Corinblit): Now, Mr. Hickey, I want to return for a minute to the question I was asking you before you made the explanation, that is the matter of the word of mouth advertising.

Just to get the simple fact established, you don't have any doubt, do you, that when you played multiple day and date in eleven theatres as compared to playing for a week—as compared to playing multiple day and date in only two theatres, that more people saw your picture in that first run in that first week in the multiple group than had seen them prior thereto. Do you have any doubt about that?

A. I just didn't understand that question.

Q. Well, under the multiple principle theory you had eleven theatres playing your picture, as many as eleven pictures playing in the first week first run and under the two exclusive theory you had only two theatres playing first run.

My question is, it is true, is it not, that more people, on the average, saw your—see your picture in the first week under the multiple run than did in the first week under the two theatre run?

A. Well, that could be and on the other hand no, because [613] what we are after mostly is to earn money on our pictures.

(Testimony of George A. Hickey.)

The Court: Well, you earn money by reason of the attendance of patrons, do you not?

The Witness: That is correct.

The Court: In other words, the people who come to the theatre?

The Witness: That is true, but we earn money by having two multiple runs and advertising the pictures so as the pictures, when they get to the various neighborhoods, will be worth more money in the neighborhood. There are a lot of people that don't go to the first run theatres. That is true. But there is a lot of people that do and there is somebody comes from each one of these areas.

There is a certain percentage that comes from Inglewood. There is a certain percentage that comes from Westwood, Santa Monica, down in the Valley, out in East Los Angeles and Whittier.

The word of mouth advertising—they tell people that they see a great picture and the word of mouth helps and the advertising in the papers that we do helps. So, the people—when that picture comes to their favorite theatre in their town, they go to see it.

That is where we get the benefit of advertising.

Q. (By Mr. Corinblit): Now, let us go for a minute to this other fact which you have mentioned, that there are [614] some people that come from Inglewood and some people, I think you said, came from Westwood and some people you said came from East Los Angeles.

(Testimony of George A. Hickey.)

A. Some people come from every area.

Q. From every area.

A. But not enough to hurt any theatre in any of those areas.

Q. All right. Now, when a man under your two-theatre principle wanted to go from Inglewood to see a first run picture, he had to travel this route through this traffic to get to Hollywood, or here through this traffic to get to downtown, is that right?

A. That is true, you have got to get there.

Q. Now, when you have the multiple first run the same man in Inglewood area has got a much shorter distance to go to see a first run, hasn't he?

A. Yes. Well, it is well advertised then.

Q. Now, the same thing is true with respect to each one of these areas, that is to say, you increase the convenience with which the members of the public can get to a first run theatre in the Los Angeles area by having a multiple day and date, don't you?

A. Well, it is probably—it probably is a little easier for them to get to it.

Q. A little easier? [615]

A. But if it wasn't well advertised they wouldn't go to see it. They wouldn't know anything about it.

Q. All right.

A. For instance, we spent \$41,580 to advertise Guys and Dolls. You don't think we spent \$42,000 and that amount of money just because it was play-

ing in the Paramount Theatre in Hollywood, do you? We didn't spend it for that.

We spent it so that the people around the city and in the county would know about it and go to see it when it come to their theatre. And then when it went into multiple runs it was worth more.

Q. Now, Mr. Hickey, let us turn to this matter of advertising for a moment.

On this advertising program that you say you ordinarily have, is that divided—a considerable extent goes to newspaper advertising, is that right?

A. It goes to newspaper advertising, some of it, but——

Q. More than half?

A. But for your information if you would get a minute or a half minute on television once every day in the week, it would cost us \$15,000.

Q. All right.

A. And it cost us \$50 an inch for newspaper advertising.

Q. Mr. Hickey, with respect to newspaper advertising. In general, that advertising is accomplished by placing a big [616] ad in the newspaper, is that right, with a picture and maybe some publicity about it?

A. It could be a big ad or a small ad.

Q. Now, the only difference between newspaper advertising on multiple run as distinguished from newspaper advertising on two runs, is the fact that instead of the name of two theatres you have got eleven theatres, isn't that right?

A. That is right.

(Testimony of George A. Hickey.)

Q. Now, and as a matter of fact, with eleven theatres—I will withdraw that question for a moment.

It is true, is it not, on some of your newspaper advertising you ask the exhibitors, the first run exhibitors to pay some part of the newspaper advertising, is that correct?

A. Yes. They would pay—they would pay \$250 and the advertising that the company would do, our company would do would be, in a lot of cases, \$10,000.

Q. All right. Now, when you had eleven theatres to share the cost of your advertising, as distinguished from two theatres to share the cost of your advertising, that made it easier, did it not, for Loew's to get a share of the advertising?

A. No, not much.

Q. From the exhibitor?

A. Not much easier, because as I said they only spent [617] \$250. If they were running the picture alone they would have to spend more than that because they wouldn't have any help from our company.

Q. Well, the share of multiple first run in your advertising program sometimes goes as high as \$7,500, does it not?

A. Well, it all depends on the theatre. The majority of them pay \$250.

All the theatres—all the drive-ins give us now is \$250. The Pickwood Theatre once in a while gives us \$700. It varies.

Q. I am talking about in total from eleven the-

(Testimony of George A. Hickey.)

atres. If you add up the total that all of the theatres give you in advertising it might reach as much as \$7,500? A. Oh, no.

Q. It doesn't? A. I don't think so.

Q. Don't you have a picture——

A. I don't think so without figuring it up.

Q. Would it be as much as \$5000?

A. No, I don't think it would reach \$5000, but we add \$10,000 and more to it. [618]

Q. Now, with respect to—I think you have made this statement, but I want to get it clear—the purpose of the advertising that you do has to do with all of the runs in the L. A. area, isn't that right? That is, you are trying to establish the picture for the entire area by the advertising that you do?

A. That is correct.

Q. Now, Mr. Hickey, in fact, you know that not only has your company gone to multiple first run, but every single company that in 1950 gave Mr. Schreiber the excuse of economic necessity, every single company has gone to multiple first run in the Los Angeles area, isn't that correct?

A. I don't know anything about any company but Metro-Goldwyn-Mayer.

Q. You don't know that Paramount is now multiple first run?

A. No, I am under oath here to tell the truth and I can't tell you what Paramount does or any other company does.

Mr. Corinblit: We have got counsel for Para-

(Testimony of George A. Hickey.)

mount here. Will you stipulate Paramount is on multiple first run?

Mr. Mitchell: No. Eleven out of the last 16 pictures have been show cased in individual theatres on Hollywood Boulevard.

Mr. Corinblit: You have not had the multiple first [619] run immediately after pre-release?

Mr. Mitchell: Immediately after show case, they go into numerous theatres.

Mr. Corinblit: And from 1952 on, did you have a multiple first run policy?

Mr. Mitchell: The same situation as I say. Pictures were often show cased ahead of time and were then put into numerous suburban theatres.

The Court: Mr. Corinblit, you are going to have somebody here from Paramount, and they can testify to what they have done, rather than ask counsel to stipulate.

Mr. Corinblit: Yes, sir, I can do that. I thought we could get a quick stipulation with respect to all these companies, because there will be no argument about it.

Mr. Mitchell: There will be an argument about it the way he says it, because he said it wrong.

The Court: Just a minute. There is an argument now so there is no question about an argument.

Q. (By Mr. Corinblit): Now, Mr. Hickey, as you have explained to the court, under the multiple day and date policy, it is perfectly possible for a theatre owned by United Artists in Pasadena to play simultaneously with a theatre owned by War-

(Testimony of George A. Hickey.)

ners downtown and a theatre owned by RKO in Hollywood, and another independent theatre in some other part of the city, isn't that correct? That is perfectly possible? [620]

A. That I don't know.

Q. Perhaps my question isn't clear. It has happened on the multiple day and date that you will have a United Artists Theatre in Pasadena play at the same time that a theatre in downtown that was not owned by United Artists would play, isn't that right?

A. That may be possible.

Q. Because you have got bidding in each area.

A. That may be possible.

Q. And, therefore, you can have different ownerships playing simultaneously with each other.

A. That is true.

Q. Do you remember the exhibit I showed you with respect to the Loew's play-off through the year September 1951, that there was not a single example on that list of probably over 1500 pictures from 1945 on where the—I will withdraw that in terms of number of pictures. I was thinking of all of the pictures, overall. It would be really about 30 pictures a season.

It was true with respect to all of Loew's pictures that they never played simultaneously in theatres that were not owned by the same ownership?

Mr. Mitchell: Wait a minute. That is not so. We have a situation of playing simultaneously in the Orpheum Theatre and the Hawaii Theatre, which were not under the same [621] ownership.

(Testimony of George A. Hickey.)

The Court: Sustained. The exhibit is the best evidence.

Mr. Corinblit: Very well, your Honor.

Q. The fact is, is it not, Mr. Hickey, that now only since the multiple first run policy does an independent exhibitor like the Paradise get an opportunity to play on first run, as it never had prior to the multiple first run policy? That is correct, isn't it? A. No, that isn't correct.

The Court: Well, you say multiple first run. Since bidding was established, all theatres have the right to come in and bid, do they not, regardless of whether they are owned by the chain or owned by the individual?

The Witness: That is true.

Mr. Corinblit: Very well. May I have access to the bidding file of Loew's, counsel?

Mr. Westbrook: Those you had before are in the file cabinet.

Mr. Corinblit: Well, you had them over the weekend.

Q. (By Mr. Corinblit): Mr. Hickey, I want to begin with respect to this bidding matter with the date September 1949 and then come up through the period in which the Paradise Theatre was opened. Now, I will ask you to examine the same [622] records that Mr. Mitchell, that is the same type records with respect to a prior period that Mr. Mitchell had you examine.

Mr. Mitchell: With respect to 1949, I object upon the ground that it is not proper recross. I

(Testimony of George A. Hickey.)

made no questions about 1949, and therefore he should be restricted from expanding the scope of recross examination.

The Court: Overruled.

Q. (By Mr. Corinblit): Now, October 1949—I am sorry these are not quite in order—October 1949, I want you to confirm with respect to the picture *Midnight Kiss*, you sent requests to bid to the La Tijera and to Fox, and that Fox returned a bid only for the United Artists Theatre, and not for the Academy Theatre, and that the La Tijera did not bid. Is that correct?

A. We have a bid here for the United Artists.

Q. But not for the Academy, correct?

A. No, I don't see any bid for the Academy.

Q. All right.

A. Nor the La Tijera, either. Lots of theatres don't bid even though we send them the bid asking them to bid, they don't bid. Sometimes we don't get any bids. Then we have to re-solicit them.

Q. On the picture, in November 1949—well, there is no return on that. Let's turn to this and we will come back to the period there, but let's turn to February 7, 1950. [623]

Mr. Corinblit: The fact is, is it not, counsel, that after—I think counsel for Fox will stipulate that on or about this date Fox was no longer interested in the United Artists Theatre, is that correct?

Mr. Johnston: I will have to beg your pardon, Mr. Corinblit. I was looking at a document and

(Testimony of George A. Hickey.)

wasn't paying any attention to you. Will you put the question to me again?

Mr. Corinblit: The date on which Fox no longer had any interest in the United Artists Theatre in Inglewood, didn't operate the theatre, is what? What is the approximate date when they no longer operated?

Mr. Johnston: The interest was changed as of January 1. I think the theatre was operated for a short time after that for the account of the United Artists Theatres Circuit.

Mr. Corinblit: By Fox?

Mr. Johnston: Yes.

The Court: January 1 of what year?

Mr. Johnston: 1950.

Q. (By Mr. Corinblit): For the picture Tension, the record shows that you sent out bids to Fox, you sent out bids to United Artists, and you sent out bids to La Tijera. I want you to confirm the fact that the operator of Fox sent you a letter in which he stated—well, the operator at that time was Fox, because they were still operating the United Artists Theatre. [624]

Mr. Mitchell: What is the date of that?

Mr. Corinblit: The picture is Tension. The date on which the notices went out was January 24 and the final date of entry here is February 7, 1950.

This overlaps, perhaps, the period Mr. Johnston referred to.

Q. Now, the record show that in response to that bid, that request to bid, Fox bid on behalf of

(Testimony of George A. Hickey.)

the United Artists but not on behalf of the Academy, and the La Tijera did not bid, is that correct?

A. That is correct.

Q. The next picture—the picture *That Forsyte Woman*, February 14, 1950.

You sent out bids to United Artists, Fox, La Tijera. Fox sent back a letter, “We don’t wish to make any offer.” United Artists sent back a bid. La Tijera did not bid. Is that correct?

A. Yes.

Q. The only company from which you received a bid was United Artists?

A. That is not unusual.

The Court: Well, you can answer that “Yes” or “No.”

Q. (By Mr. Corinblit): That is correct, is it not? A. Correct.

Q. With respect to the next picture, *Malaya*, you sent [625] out letters to Fox, La Tijera and United Artists. Mr. Pirosh for Fox sent you a letter saying, “We do not wish to make a bid.” Your records show the La Tijera did not bid so the only theatre that bid was the United Artists, correct?

A. Correct.

Mr. Mitchell: What is the date of that?

Mr. Corinblit: It covers a date, counsel, from February 14 to February 27, 1950.

Q. The next picture is——

Mr. Mitchell: May we have a date on each of them because these are all long prior to the *Paradise*.

(Testimony of George A. Hickey.)

Mr. Corinblit: We will give you the date, all right.

Q. The next picture—two pictures.

Mr. Johnston: Do you want to stipulate the Paradise opened in August of 1950 so we can be clear about it?

Mr. Corinblit: Yes.

Mr. Johnston: Thank you.

Q. (By Mr. Corinblit): The next picture is East Side, West Side, and Challenge To Lassie.

Your requests went out February 24, 1950, to the La Tijera, Fox and United Artists. Mr. Pirosh of Fox West Coast sent you a letter, "We do not wish to make a bid."

United Artists put in a bid. La Tijera did not bid, correct? A. Correct. [626]

Q. The next picture, Ambush. You sent out letters requesting bids to the La Tijera, Fox and United Artists of March 3, 1950. Mr. Pirosh of Fox sent you a letter, "We do not wish to make a bid."

The La Tijera did not bid. The only company that bid and won the picture was United Artists, is that correct? A. Yes, sir.

Q. Now, Mr. Hickey, during this period when you were sending out offers to three companies and regularly only one company was sending back a bid and regularly Mr. Pirosh of Fox West Coast was telling you "I don't want to bid."

During that period, right around that time Mr. Schreiber come to see you and asked you for pictures, did he not?

(Testimony of George A. Hickey.)

Mr. Mitchell: That period, your Honor, as I assume is the period covered by those letters, namely January and February 1950.

Mr. Corinblit: All right. Mr. Mitchell's objection is well taken.

Mr. Johnston: Mr. Corinblit, I assume you are going into the rest of the letters that you represented to the court that you would, during the whole period of the Paradise operation.

Mr. Corinblit: If you will permit me to conduct my own examination.

Mr. Johnston: I just want you to do what you said you [627] were going to do.

Q. (By Mr. Corinblit): Now, Mr. Hickey, right about the time that this procedure was being carried on, Mr. Schreiber came to see you. That would be about the end of March, 1950, isn't that right?

A. I don't remember dates.

Q. You don't recall dates. All right. I will show you a document which has not been marked. I believe it is identified as an exhibit of Loew's. Will you confirm it? This is one of your exhibits.

(Handing document to Mr. Westbrook.)

Mr. Westbrook: Just a moment. Defendant's Exhibit A-10 for identification.

Mr. Corinblit: I think we can use this copy for the purpose of refreshing your *collection*.

Q. I will show you a document, Mr. Hickey, which is a duplicate of Defendant's Exhibit A-10, which is a letter from Hickey to Isenberg dated March 30, 1950, and ask you if that refreshes your

(Testimony of George A. Hickey.)

recollection that Mr. Schreiber came to see you at the end of March 1950?

A. Yes, I remember I stated before that Mr. Schreiber was in to see me three or four times. That I answered once before.

Q. All right. Now, let us go back just a little bit, prior to that March 30th date. [628]

The first communication you had from Mr. Schreiber was on February 6, 1950, I believe, and I will offer in evidence Plaintiff's Exhibit D-1 and D-2.

The Clerk: Plaintiff's Exhibit D?

Mr. Corinblit: D-1 and D-2. I am sorry. Pardon me. I was giving the numbers in the deposition. They are Exhibit 6-A, 6-B, 6-C, 6-D.

(Handing documents to Mr. Mitchell.)

Mr. Corinblit: I offer in evidence, Exhibits 6-A, -B, -C and -D.

The Court: They may be received.

(The exhibits referred to were marked Plaintiff's Exhibits 6-A, 6-B, 6-C and 6-D, and received in evidence.) [629]

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Q. (By Mr. Corinblit): Now, after this exchange of letters, Mr. Hickey, Mr. Schreiber wrote another letter to New York dated March 6, 1950, and I will offer that as Plaintiff's Exhibit [631] 6-E in evidence.

The Court: It will be admitted.

(The exhibit referred to was marked Plaintiff's Exhibit 6-E, and received in evidence.)

* * * * *

(Testimony of George A. Hickey.)

Q. (By Mr. Corinblit): Now, as indicated, Mr. Hickey, subsequently Mr. Schreiber did stop in to see you and I think you testified that he asked you if he could have the privelege for his [632] Paradise Theatre of playing a non-exclusive first run—that is simultaneously with the two theatres that you were playing first run, and you said no, is that correct? A. That is correct. [633]

Q. And then he asked you if under those circumstances could he possibly have the privilege of playing pictures on a 7 day availability, isn't that correct? A. That is correct.

Q. He asked you if he could play on 7 day availability in Westchester.

At that time where were the other 7 day situations in the Los Angeles area? You had one in Inglewood, didn't you? A. One in Inglewood.

Q. And that legally is a separate city, isn't it, the city of Inglewood, or do you know?

A. I believe so.

Q. You had one in the area known as Belvedere Gardens, didn't you? A. I don't remember.

Q. That is the Golden Gate in Belvedere Gardens? You remember that, don't you?

A. I really don't. If I did, I would say so, but I don't remember.

Mr. Corinblit: Can we have a stipulation on that, or do you want to check the facts that Loew's had a 7 day situation in Belvedere Gardens?

Mr. Mitchell: Yes, but not at the Golden Gate Theatre. They had a 7 day situation on a bid. [634]

(Testimony of George A. Hickey.)

Mr. Corinblit: All right. You were permitting 7 days in the Belvedere Gardens area.

Q. Where was the other place that you were permitting 7 days?

A. Well, we had it in Pasadena.

Q. Pasadena, and where else?

A. I believe we had 7 days in Culver City.

Q. Culver City. Any place else? How about Glendale?

A. Might have had it in Glendale.

Q. How about Huntington Park?

A. Well, I really don't remember without looking at the records. I wouldn't say.

Q. If I remind you of the name of the Fox California in Huntington Park?

A. That wouldn't help any.

Q. That wouldn't help?

Mr. Mitchell: I will stipulate with you that they had a 7 day run on bid in Huntington Park.

Mr. Corinblit: Counsel, I wish you wouldn't ask for that stipulation on bid, because we will have that question gone into, if you want to, but don't state it was on bid.

Mr. Mitchell: Well, that is the fact so that's all I can say.

Q. (By Mr. Corinblit): Mr. Hickey, can you tell me, if [635] you remember, you have been with Loew's a long time, those areas having 7 days—

The Court: Mr. Corinblit, Mr. Hickey is a little hard of hearing. You are dropping your voice.

Mr. Corinblit: Yes, sir. All right.

Q. In fact, those 7 day areas are the same 7 day

(Testimony of George A. Hickey.)

areas you had in Los Angeles when Los Angeles had 50 per cent of the population it has now, isn't that right?

A. It may be. I don't know. All I know is this, that we offered, and it states in this letter, we offered the Paradise Theatre 7 days if they would bid for it.

Q. All right. We will come to that in just a moment. Taking your attention to prior, just in 1949, in 1949 it is a fact, isn't it, that every one of these areas were Fox towns, isn't that right?

A. I didn't hear.

Q. Each one of those areas were Fox towns that had the 7 day right, isn't that right?

A. That might be.

Q. Now, in this greater Los Angeles area, in fact, although it is a long way, and I will admit it, but I think you might have told the court that there was no other theatre in the city of Los Angeles that had anything earlier than 21 days. I may be wrong on that part, but——

A. You were wrong. [636]

Q. But the fact is you had a theatre——

Mr. Mitchell: What did you say, Mr. Hickey?

The Witness: He was wrong.

Q. (By Mr. Corinblit): All right. Then the fact is that you had a first run theatre in San Pedro, which is a part of the city of Los Angeles, did you not?

A. Well, I will tell you about San Pedro.

Q. May I interrupt just a minute? Could you

(Testimony of George A. Hickey.)

answer that question yes or not? A. Yes.

Q. You did have? A. Yes.

Q. All right, go ahead and explain.

The Court: Now make your explanation.

The Witness: San Pedro at the time that we awarded them that run was not connected in any way with the city of Los Angeles. During the time or at a period of time after that, the city of Los Angeles took in a certain portion of that area out there so they could get an outlet to the harbor, and then it become, of course, a part of Los Angeles. But when we awarded this in the first place it was not a part of Los Angeles.

The Court: May I inquire, what theatre had the first run in San Pedro?

The Witness: I really don't know, your Honor. I [637] can't tell you because——

The Court: Was it a Fox theatre or was it an independent theatre?

The Witness: In San Pedro, there is a Warner's theatre we done business with, and there is a Fox theatre, and there is a drive-in out there.

The Court: When you first went into San Pedro there was no drive-in. That was a long time before drive-ins.

The Witness: No, there was no drive-in, but when we first went into San Pedro, I think there was a Fox and Warner's theatre.

The Court: Do you remember which theatre was given the first run right?

(Testimony of George A. Hickey.)

The Witness: No.

The Court: That was before the days of bidding.

The Witness: No, I do not.

The Court: All right. I notice, Mr. Corinblit, it's 11 o'clock and maybe since I interrupted you it is a good place to take the morning recess.

Ladies and gentlemen of the jury, we are about to take our recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it *with you* are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you. [638]

With that admonition we will now recess until 15 minutes after 11:00.

(Recess.) [639]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Hickey, a moment ago the court asked whether or not you remembered what was—whether there was a Fox theatre in San Pedro that you played first run, and I wanted to refresh your recollection.

I show you a transcript of a deposition you gave in the case of Fanchon and Marco v. Baldwin, and call your attention to page 1964, the question that I have marked here, and ask you if you will examine that question and that answer and see if that doesn't refresh your recollection that that was a

(Testimony of George A. Hickey.)

Fox theatre that played on 7 days prior to the drive-in coming there.

Mr. Mitchell: That was Fanchon and Marco against Warners or some company involving the Baldwin Theatre.

Mr. Corinblit: I beg your pardon, that is correct.

The Witness: Yes, that is true.

Q. (By Mr. Corinblit): So it was the Fox Granada? A. Yes.

Q. Now, as a matter of fact—now, I want to get this clear, Mr. Hickey,—when you went to seven days in San Pedro you stated it wasn't in Los Angeles?

A. Well, I could be mistaken about that. I was thinking [640] that over, and I believe that that change was made in 1912. That is before I was born.

Q. So that when you went day and date in San Pedro, San Pedro was already a part of the City of Los Angeles, isn't that right?

A. Yes, I think that is right.

The Court: Day and date? When you first went down to San Pedro, a first-run theatre in San Pedro, San Pedro then was a part of Los Angeles?

The Witness: Yes, sir.

Q. (By Mr. Corinblit): Now, not only is that correct but it is also true that you had a 7-day theatre in Wilmington, isn't that right?

A. That could be possible. I don't remember.

Q. And Wilmington was a part of the City of Los Angeles, no question about that?

(Testimony of George A. Hickey.)

A. Yes, but that is about 30 miles away, or 35 miles away. San Pedro is 35 miles.

Q. Now, when Mr. Schreiber came to see you, you told him—in March of 1950—you told him that you would not permit him to have a day and date availability of seven days in Westchester, isn't that correct? A. That is correct.

Q. And of course you told him you would not permit first run Los Angeles in Westchester? [641]

A. That is correct.

The Court: Mr. Hickey, didn't I understand you to say the other day that you told Mr. Schreiber that the reason you wouldn't give him seven days in Los Angeles was because you did not have any 7-day theatres in Los Angeles city limits?

Mr. Mitchell: Your Honor, he never said he wouldn't give him seven days. He always has said he would give them seven days if they bid for it.

There was no testimony—

The Court: But at the original time Mr. Schreiber came in and asked for pictures, he asked for first run and then he asked for seven days.

Mr. Mitchell: Yes.

The Court: And my understanding was that Mr. Hickey said, "We will not give you seven days because we do not have seven days in Los Angeles City."

Mr. Corinblit: I think I may be able to find that in the record.

The Court: And I think that is what he testified to.

(Testimony of George A. Hickey.)

Now, do you recall that you told us that?

The Witness: I believe I do.

The Court: Then the fact of the matter is, you did have two 7-day theatres in the Los Angeles city limits, one in San Pedro and one in Wilmington?

The Witness: As I said here, I wasn't positive that San [642] Pedro was in Los Angeles, and then I came and said I found out that it was. [643]

The Court: I know, but when you told Mr. Schreiber you wouldn't give him 7 days because you didn't give any 7 day availability in Los Angeles city limits, the fact of the matter is at that time you did have a 7 day theatre in the city limits, although it was in San Pedro, 35 miles away from downtown Los Angeles.

The Witness: That's right.

Mr. Corinblit: I think, your Honor, the testimony was that the 7 day theatre was in Wilmington and the first run theatre in San Pedro.

Q. Is that correct, Mr. Hickey, or were they both 7 days? A. I didn't hear that.

Q. The 7 day theatre was in Wilmington and you had a first run theatre in San Pedro, is that right, day and date with downtown?

A. Yes, they could run, but they don't as a rule run day and date with downtown.

Q. All right. Now, Mr. Hickey, you did state to Mr. Schreiber when he came to see you that you will not permit day and date first run, but you will require him as a condition for obtaining 7 day availability to bid against the theatres in Inglewood,

(Testimony of George A. Hickey.)

is that correct? A. That is correct.

Q. With respect to this matter of bidding, wasn't it [644] your position in 1950, hasn't it always been your position that bidding is less advantageous to your company than when you didn't bid?

A. Yes. We don't like bidding. We never asked for bidding.

Q. All right. So it has been your position that bidding is less advantageous to your company, isn't that correct? A. That is correct.

Q. One of the reasons that you stated that it was your position and Loew's position that bidding was less advantageous is because exhibitors can get together and divide up your pictures and divide up the other companies' pictures, isn't that correct?

A. I never said that.

Q. You never said that?

A. No, that I remember.

Q. Do you remember, Mr. Hickey, that you gave a deposition under oath in the case of Metropolitan Theatres vs. Loew's Incorporated? Do you remember doing that? A. I remember that.

Q. I want to show you pages 43 and 45 of that deposition and ask you to read pages 43 to 45 and particularly the lines from 12 to 24 on page 45. You might begin with the question at the bottom of 43 and then go over. [645]

A. (Witness examining document.)

Q. Now, Mr. Hickey, that you have read your testimony, pages 43 to 45, it is a fact that you took the position that bidding was less advantageous to

(Testimony of George A. Hickey.)

your company because the exhibitors get together and say, "I am not going to bid on this picture. You can have it." Another one will get together and say, "I am not going to bid on it. You can have it." "They all get together and the fellow that does bid gives us nothing and we are at his mercy, and then if we go out and negotiate for this, if we turn his bid down and go out and negotiate, nobody will buy it. If the distributor did that, they would put him in jail and throw the key away on him, but the exhibitor can do anything he wants to."

That is what you said in that deposition, isn't that right? A. Well, that is true.

The Court: The question is, Mr. Hickey, did you say that?

The Witness: Yes. The reason——

Mr. Corinblit: It may call for an explanation, your Honor, and if it does, all right, but I don't think it does at this point.

The Court: I don't think it needs an explanation. The only point is, did you say it?

The Witness: Yes. [646]

The Court: Mr. Corinblit, I think I should advise the jury of certain matters. There has been mentioned in this case a number of other motion picture cases. We have had mention of the Baldwin case, the Metropolitan case, the Partmar case, and some other cases.

Now, the fact that other cases have been tried in this court is of no interest to you particularly. It is true that they can use depositions or use state-

(Testimony of George A. Hickey.)

ments for the purpose of impeaching witnesses or refreshing recollection, but whether or not the plaintiff succeeded or didn't succeed in those other cases is absolutely immaterial. You are to try this case upon the evidence in this case, not upon the evidence in some other case.

You are not to concern yourself with whether in the Baldwin case or the Partmar case or some other case the plaintiff succeeded or didn't succeed. These cases are only mentioned for the purpose of identifying the cases to the witness and not for the purpose of influencing the jury in any way. So you are not to be concerned with whether or not the plaintiff recovered or did not recover in these other cases.

All right, Mr. Corinblit. [647]

Mr. Corinblit: Your Honor, do you want to explain this matter of impeachment to the jury?

The Witness: I would like to explain——

The Court: I used the word "impeachment." That is another word you may not understand.

A witness is presumed to tell the truth. It doesn't make any difference whether he is a man as high up in the industry as Mr. Hickey or just a man in the street or a bum, they are all supposed to tell the truth.

Now, if a witness makes a statement upon the witness stand, he can be impeached by showing that he made statements to the contrary to some particular other place and time.

In other words, if he says today it is black, you

(Testimony of George A. Hickey.)

might be able to show that a year ago he said it was red and that is impeachment. But it is up to you to determine whether or not the plaintiff is telling the truth and whether he is sincere and honest and above-board. You are to evaluate the testimony of each witness.

The Clerk: You said "plaintiff."

The Court: Excuse me, if I said plaintiff. I meant the witness.

Mr. Mitchell: Will you also explain the term "refreshing your recollection" because there was a question as to whether or not he recalled something and he was apparently refreshing his recollection.

The Court: Yes. That is another term we use—"refresh your recollection." I don't presume that many of you could tell me what you did on the 17th day of July, 1955. I doubt if many of you could tell me even where you were.

I am satisfied you can't tell me who you talked to or what the conversation was.

Well, if you stopped to think and maybe if you looked at some records or may if you looked at a story or maybe if you looked at a statement you made, you could refresh your recollection.

It is no disgrace to not remember. It is no disgrace to say, "I don't remember," or "I can't recall," and then some documents are shown to a witness for the purpose of refreshing his recollection and after reading the document he says, "Yes, I remember now. I didn't remember before. My recol-

(Testimony of George A. Hickey.)

lection has been refreshed. I remember now and I said so and so."

Anybody else want me to educate the jury?

All right, Mr. Corinblit.

The Witness: Now, I would like to explain that statement that I made.

Q. (By Mr. Corinblit): I would like to, if I may continue this line of questioning.

The Court: I don't think the statement [649] demands an explanation. The question only was did you say it and you said you did.

The Witness: Yes.

The Court: And that is all that is necessary.

Q. (By Mr. Corinblit): Now, Mr. Hickey, did you also state that the persons from whom you obtained the information as to this disadvantage to Fox—

The Court: Wait a minute.

Mr. Mitchell: Now, wait a minute, wait a minute.

The Court: Wait a minute. I made a mistake awhile ago when I said "plaintiff," when I meant the witness. Now, you said "disadvantage to Fox." Now, he didn't say anything about disadvantage to Fox at all.

Mr. Corinblit: I misspoke myself, your Honor. I am sorry.

The Court: All right.

Q. (By Mr. Corinblit): The persons from whom you obtained the information upon which you based

(Testimony of George A. Hickey.)

your statement that it was disadvantage to Loew's to have competitive bidding because the exhibitors would cut, would divide the pictures, included Mr. Stein of United Artists Theatre, Mr. Rosenberg and the Skouras people, isn't that correct? And in that connection, I will ask you to examine, if you like, your statement on Page 51.

(Document handed to the witness.) [650]

The Witness: Well, yes, I made that statement but I said it because of this reason. They owned the theatres there and they could be the ones as far as my knowledge of it, the only way that I would know those things is because the other people will not bid. There is only one—if there is four theatres, Mr. Rosenberg would own one and Mr. Skouras would own another and somebody else would own another one. If there was only one bid and you get that picture after picture, only one theatre bids, then you must feel, without knowing it or without being told, you must feel that there is something going on there when only one theatre bids.

Q. (By Mr. Corinblit): Well, these people came in and told you about it, didn't they?

The Court: Keep your voice up, Mr. Corinblit.

The Witness: Not that I remember they told me about it.

Q. (By Mr. Corinblit): Now, Mr. Hickey, I want you to read pages 51 and 52 and then answer that question again.

(Handing document to the witness.)

(Testimony of George A. Hickey.)

(Document handed to Mr. Mitchell.)

Q. Now, do you want to read that again, sir?

A. I haven't read this page.

Q. Yes. Now, Mr. Hickey, in that case were you asked this question: [651]

"You mentioned a moment ago in answer to my question why, certain reasons that you had for feeling that your present method of licensing motion pictures is not as advantageous as the way you used to license motion pictures, and you described what you alleged to be certain collusive activities on the part of the exhibitors.

"From whom did you get this information, that which you described?

"A. The exhibitors.

"Q. Which ones?

"A. Mr. Stein, Mr. Rosenberg, Skouras people.

"Q. Who are Skouras people?

"A. Mr. Pirosh.

"Q. All right. Who else?

"A. And the Warner Bros. sat in my office telling me that 'This is my picture and they have all agreed to give it to me, and nobody is going to bid on it but me.'

"Q. You say all of these men did, or the Warner Bros. sat in your office? "A. All of them.

"Q. When was that?

"A. Including Mr. Rosenberg.

"Q. When was that? [652]

"A. I can't remember that date.

(Testimony of George A. Hickey.)

“Q. Well, can you give me any idea whether it was ten years ago or two years ago?

“A. No, it wasn’t ten years ago. It was within the time we started to bid.

“Q. Well, how long has that been?

“A. And we have got some records in our office, because when they went out we made notes of what they said.

“Q. Can you produce those records in this deposition?

“A. I don’t know whether I can find them now or not.

“Q. Well, will you make a search for them, and if you find them produce them?

“A. Yes, I will make a search for them. But I can swear now——

“Q. Well, you are swearing to everything, you understand? “A. Yes.

“Q. You are under oath.

“A. Yes, but I am not—I am telling you now that each and every one of these men have told me personally that they were doing that. They not only did it here, but they did it all over the state, wherever there was bidding. [653]

“Q. Now, I am asking you now, where did those conversations occur? “A. In my office.”

Now, Mr. Hickey, you were asked those questions and you gave those answers, is that correct?

A. That is correct.

Q. Each question that was asked and each answer you gave was true and correct?

(Testimony of George A. Hickey.)

A. That's right.

Q. A little further on:

"Q. You can't remember the dates?

"A. Can't remember the dates——"

Mr. Mtichell: Well, he hasn't even shown this to the witness.

Mr. Corinblit: Yes, it is on page 53.

Mr. Mitchell: He hasn't denied he so testified, your Honor.

Mr. Corinblit: We haven't concluded the questioning on this.

Mr. Mitchell: Well, it isn't proper to read the deposition in this manner. I let him go on because he has not denied he testified to the facts as stated here.

The Court: Objection overruled.

Q. By Mr. Corinblit:

"Q. You can't remember the dates?

"A. Can't remember the dates.

"Q. Would you recall the names of the pictures that were involved at the time? [655]

"A. That is every picture. They get together on every picture.

"Q. Well, they have been in your office more than once?

"A. It isn't once—a dozen times."

Now, you were asked those questions and gave those answers, correct? A. Correct.

Q. When you gave those answers, it was the truth? A. I presume so.

Q. Well, you know it was the truth?

(Testimony of George A. Hickey.)

A. Yes.

Q. There are only two other matters here that I will ask you to look at, the question beginning line 23 and the answer beginning on line 2 on the next page, pages 53 and 52.

A. (Witness examining document.)

Q. Page 53, were you asked this question and did you give this answer:

“Q. Your testimony now is, as I understand it, that on every occasion that you offer a picture one or more of these gentlemen come into your office and make these statements concerning the method in which they are colluding; is that correct?

“A. Sometimes they come in and sometimes they don't. Sometimes they give it to me over the phone. We ask them why [656] they don't bid on it and they say, 'Well, I have got an agreement with so-and-so that I am not going to bid on it.' So they have agreements with each other. They will bid on our pictures when they want to and when they don't want to, they don't.”

Were you asked that question and did you give that answer? A. I did.

Q. When you gave that answer, that answer was true? A. Yes.

Q. Mr. Hickey, when you referred to the Warner Bros., the person to whom you referred was Mr. Leo Miller, isn't that correct?

I will ask you to look at page 62 of this deposition given in the Metropolitan case.

A. (Witness examining document.)

(Testimony of George A. Hickey.)

Q. The person to whom you referred was Leo Miller?
A. Leo Miller, yes.

Q. Now, Mr. Hickey, the men who in your office you testified discussed with you these agreements included Mr. Pirosh from Fox and Mr. Stein. Who was Mr. Stein in 1950?

A. Who was he?

Q. Yes, that is, he was associated with United Artists Theatres Circuit, isn't that correct?

A. Yes. [657]

Q. Mr. Pirosh who discussed this matter with you was buying in 1950 for the Fox theatres in the Inglewood area, isn't that correct?

A. That is correct.

Q. And Mr. Stein was buying not only for the first run theatre in downtown Los Angeles, but for the United Artists Theatre in Inglewood, isn't that correct?
A. That is correct.

Q. Now, despite all this, when Mr. Schreiber came in to see you and asked you to permit him to play on day and date and 7 day availability, if you wouldn't give him first run, you told him you wanted him to bid against Inglewood, is that correct?
A. That is correct.

Q. Now, you didn't tell him at that time that there were agreements that you knew about relating to the division of pictures on first run and on seven days in the Inglewood territory? You didn't tell him that? Did you say that to him at that time?

A. No. I had no occasion to say that to him.

(Testimony of George A. Hickey.)

You don't have to say that to him. They will get together. [658]

Q. Now, subsequently, Mr. Mitchell went through with you yesterday a record of bidding, so-called, beginning in May 1950, to the time that the Paradise opened and thereafter.

Now, I wish you would tell the jury, Mr. Hickey, something about this matter of the theatre business. Is it your custom when you license a theatre a picture on a run and sell on a percentage, when you are working out the deal with the exhibitor, to try to estimate in your own mind what that picture is going to gross in the theatre?

Am I clear or is that ambiguous?

A. It is not clear to me.

Q. When you negotiated with a theatre and the question is what terms are you going to try to get from that theatre, you estimate in your own mind what the gross potential of that theatre is, isn't that correct, on that particular picture?

A. That is correct.

Q. Then with that information you may decide you will try 35 per cent or 40 per cent or 30 per cent, whatever you think the picture may be worth, is that right? A. That's right.

Mr. Mitchell: This is where there is no bidding, you are talking about?

Mr. Corinblit: Yes, in negotiating. [659]

Q. (By Mr. Corinblit): As a matter of fact, in order to apply that principle, when a new thea-

(Testimony of George A. Hickey.)

tre opens you ordinarily put a picture in there to find out what it will do, isn't that correct?

A. That is correct.

Q. That is the general practice?

A. That's right.

The Court: Do you mean every one of the distributors put a picture in the theatre to find out what it does, or just one distributor?

The Witness: Well, I know that we do. You see, when a theatre opens first and we have no records or no grosses on that theatre, we generally put a picture in there on reasonable terms so we can find out what the theatre is capable of grossing.

The Court: I know that is what Metro-Goldwyn-Mayer does, but how about the rest of these distributors? They are interested in the same problem, are they not?

The Witness: Yes, I presume that if they run their business like we do, they would do the same thing, but I don't know that they do.

The Court: It is your policy to put in the first picture in these new theatres?

The Witness: We don't put them in for nothing. We put them in on a fair basis and then when we get the gross we [660] generally know after that how to figure the theatre and how to sell our pictures in there.

The Court: Now, let me ask you another question. It is clear to me, but it may not be clear to the jury. You talk about what a picture is worth, the worth of a picture. The value of a picture to

(Testimony of George A. Hickey.)

the distributor varies from locality to locality, isn't that right?

The Witness: That's right.

The Court: In other words, a picture may be worth more in Westwood than it would be in Huntington Park?

The Witness: That is true.

The Court: And you expect more revenue out of Westwood than Huntington Park.

The Witness: That is true.

Mr. Mitchell: What he has been talking about, your Honor, is non-bidding situations.

The Court: I am talking about what a picture is worth ordinarily.

Mr. Corinblit: What we are really talking about is how Mr. Hickey gets an idea as to what a picture is worth.

Mr. Mitchell: In non-bidding situations.

Mr. Corinblit: All right, in non-bidding situations.

Q. Now, Mr. Hickey, let me ask you this question, and I think I know the answer. You don't discuss with other film [661] companies how their pictures do in the theatre, do you? A. No.

Q. Never do that? A. No.

The Court: Of course, inasmuch as you have the best pictures, you expect your pictures to gross the most.

The Witness: That is true.

The Court: Why, absolutely.

Q. (By Mr. Corinblit): Mr. Hickey, I want to

(Testimony of George A. Hickey.)

show you what Mr. Mitchell showed you yesterday, the bidding record on the picture *A Life of Her Own*, September 25, 1950. You notice that the Paradise put in a bid of 14 days 40 per cent of gross, and you rejected that bid and took another bid; that is correct, isn't it?

A. That is correct.

Q. Now, Mr. Hickey, it is a fact, is it not, that when you rejected that 40 per cent bid, you had not followed your customary practice of permitting a picture to be played in the Paradise, you never permitted a picture to be played in the Paradise, and you didn't have the remotest idea what the gross of that picture could possibly be in the Paradise?

Mr. Mitchell: We will object to that on the ground it assumes a fact not in evidence. If there is any evidence, it is only a custom to try out the theatre. You can't try out a theatre in a bidding situation, and that is why I was so particular [662] to make certain to make it clear that those answers were all about non-bidding situations. He has now twisted a non-bidding situation into a bidding situation and assumed Mr. Hickey was talking about a bidding situation when he was talking about a non bidding situation, and therefore the question assumes facts not in evidence. [663]

The Court: I am going to sustain the objection.

Change your question, because I think the fact is that, at the time the bid was refused, there was no Metro-Goldwyn-Mayer picture played in the theatre,

(Testimony of George A. Hickey.)

and Mr. Hickey didn't know what the gross was going to be. I think he can answer it that far.

Mr. Corinblit: Yes.

The Court: Regardless of whether there was bidding or no bidding.

Q. (By Mr. Corinblit): Would you answer that question, Mr. Hickey?

Mr. Corinblit: I wonder if you would read it back.

The Court: Let me rephrase the question.

At the time you turned down that particular bid no Metro-Goldwyn-Mayer picture had been played in the Paradise Theatre, and you did not know what the gross would be in the Paradise Theatre?

Mr. Mitchell: Your Honor, is your Honor's question limited to seven days or to other availability?

The Court: Well, at the time the bid was turned down no Metro-Goldwyn-Mayer picture had been played, and if Mr. Hickey didn't pay any attention to the grosses of the other pictures, then he had no knowledge as to the grosses might be under any circumstance.

That is true, is it not, Mr. Hickey? [664]

The Witness: Yes. You see, when we put a picture out on the market we generally know whether it is going to be a big grosser or a small one. Now, in this particular situation here we turned down the bid simply because we knew, without even having a picture in the Paradise Theatre, that the picture couldn't gross what we were offered as a guarantee for the picture in the Academy Theatre.

(Testimony of George A. Hickey.)

I would like to look at that again, if you please.

The Court: What was the name of that picture?

Mr. Corinblit: Life of Her Own.

The Court: Was that one of your better pictures?

The Witness: Yes, sir, it was a very good picture, and the Academy Theatre grossed, or, offered us \$4,025 as a guarantee, plus 70 per cent in excess of \$10,000, less the cost of the second feature.

Now, that "less the cost of the second feature" means that if they pay \$300 or \$500, that is taken out of the gross for the second picture.

Now, the Paradise Theatre offered us 14 days at 40 per cent of the gross, less the cost of a second feature.

Now, the experience that I have had, being distributing pictures for 31 years with this company, I don't have to—I don't have to guess and I don't have to know too much to know that when I get a guarantee of \$4,025 from the Fox Theatre, plus 70 per cent of their entire gross in excess of [665] \$10,500, I don't have to think much to know that it is going to do more than the Paradise Theatre, because I know—I would be willing to bet on it—I know that it is going to do more. I know that I am going to get more money, and that is the reason I accepted that bid.

I couldn't afford to accept this bid. Here is a bid from the United Artists for 14 days, same picture, \$2,750 guarantee against the first week, 40 per cent to \$5,050 the second; 60 per cent less 21½ for a double bill deduction; and the second week 35

(Testimony of George A. Hickey.)

per cent to \$4,250, and then 60 per cent less 2½ for double bill deduction.

I didn't take the United Artists bid, which is also a better bid than this bid here in the Paradise. That is a better bid in the United Artists Theatre, but I passed that and took the Academy bid because I know it is a better bid. I know I can earn more money. I know I can in the United Artists or the Paradise Theatre—I know I can earn more money than I can in the Paradise Theatre, and that is the reason I took the bid.

Q. (By Mr. Corinblit): Mr. Hickey, have you also observed in your experience that a theatre, after it is established on a run——

Mr. Corinblit: Let me withdraw that.

Q. In your experience, is it that the theatres would like to get a steady flow of pictures on the run on which [666] they are playing?

A. Would like to get what?

Q. A steady flow of pictures on the run which they are playing—that is, they like seven days regularly if they are playing seven days, or 14 days, whatever run they are playing, they like to get a steady flow?

A. Yes. They like to get a steady flow in Hollywood, in the showcase run. That is why I wanted a steady run there. I didn't want to be jumping around.

Q. And the reason that the exhibitors like a steady flow is because their theatres get established

(Testimony of George A. Hickey.)

in that position, and Loew's and your company are agreeable to that, isn't that right?

A. It is agreeable to it if we have a theatre that we can make money in.

Q. Now, the reason that a theatre wants to get established on that run is because, once it is established, people customarily go to the theatre regularly because they know the pictures are coming in on a 7-day availability, and their grosses can build up, isn't that right?

A. If you have good pictures.

Q. Now, Metro-Goldwyn-Mayer made it impossible, as well as the other companies, but Metro-Goldwyn-Mayer made it impossible for the Paradise Theatre ever to develop its potential because you refused to put a single picture into that [667] theatre, even on an experimental basis, isn't that correct, for the first three months of its operation?

A. We don't put pictures in a theatre on an experimental basis.

Q. I thought you testified——

Mr. Johnston: Let him finish his answer.

The Witness: We put them in on certain terms to get an idea of what the theatre can do, but we don't put them in for fun—we don't put them in for nothing.

Q. (By Mr. Corinblit): You didn't even do that in the Paradise, did you, on any terms?

A. Because they wouldn't buy them and they wouldn't bid on them when we gave them a chance

(Testimony of George A. Hickey.)

to bid, and they don't bid now and they don't play our pictures now.

Mr. Corinblit: I notice it is 12 o'clock, your Honor.

The Witness: Our pictures are too expensive for the Paradise, so the gentleman says. He can't afford them.

What are we going to do? Just because he can't afford them, are we going to lay them on the shelf?

We made a picture that cost three and a half million dollars, Kismet.

We made another one costing three million dollars, Diane.

He didn't run either one of them, to my knowledge.

Mr. Corinblit: All right. I think this might be a good place for a break, your Honor. [668]

The Court: Ladies and gentlemen of the jury, we are about to take another recess and again it is my duty to admonish you you are not to discuss this case with anyone, you are not to permit anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has finally been submitted to you.

With that admonition, the court is now in recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same day.) [669]

Tuesday, July 17, 1956, 2:00 P. M.

(The following proceedings were had in

chambers, outside the hearing and presence of the jury):

The Court: In regard to Plaintiff's Exhibit 6-M, I have ordered Mr. Corinblit not to read the first sentence in paragraph 3.

In regard to Plaintiff's Exhibit 6-P, I have ordered Mr. Corinblit not to read or give to the jury the first sentence in the second paragraph.

Mr. Corinblit: And the Plaintiff takes an exception.

The Court: And the plaintiff takes an exception.

(The following proceedings were had in the hearing and presence of the jury):

The Court: Stipulate the jury is present in the box?

Mr. Mitchell: So stipulated.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

GEORGE A. HICKEY

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows: [670]

Redirect Examination—(Continued)

Q. (By Mr. Corinblit): Now, Mr. Hickey, when you refused to permit the Paradise Theatre to play on a 7 day availability on a day and date basis, there was some correspondence between the plaintiff and yourself, and I would like to read some of this correspondence.

Mr. Corinblit: I will first offer in evidence the

(Testimony of George A. Hickey.)

portions of Plaintiff's Exhibit 6-M which the court has admitted. May I read those to the jury?

The Court: You'd better get your record on it first. It may be admitted in evidence.

The Clerk: 6-M.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-M.)

* * * * *

The Court: Mr. Corinblit, it says the Academy was five miles away. Where was the Academy located, and which Academy are you referring to?

Mr. Corinblit: The Academy, your Honor, is located here where I have the pointer.

The Court: Is that in Inglewood?

Mr. Corinblit: Yes. That would be this section of Inglewood here (indicating).

The Court: May I inquire, is it agreed that the Academy is approximately five miles distant from the Paradise?

Mr. Mitchell: We had a stipulation it was four and four-tenths miles distant.

The Court: Four and four-tenths.

Mr. Corinblit: I have four and five-tenths on my sheet.

Mr. Mitchell: I won't argue over the one-tenth, your Honor. The first stipulation was four and four-tenths, but I will gladly modify the stipulation to four and five-tenths. One-tenth of a mile one way or the other doesn't make any difference.

Mr. Corinblit: I don't recall any stipulation but four and five-tenths is what is provided by the de-

(Testimony of George A. Hickey.)

pendants and we will stipulate it is four and five-tenths miles.

The Court: I might say to the jury that at the conclusion of the evidence in this case I will give you some instructions on the law that is applicable to the case, and I will probably [675] give you an instruction on the question of substantial competition.

Now, I will instruct you at the proper time that no distributor can prefer one theatre over another, ordinarily, if they are not in substantial competition.

In other words, a theatre in Santa Barbara and a theatre in San Diego should be treated exactly alike because there is no competition. But if you have a theatre where there is substantial competition between the two, it is impossible to show the same picture in the two theatres at the same time, and consequently one has to be given preference over the other.

And so when you give one preference over the other on the theory that it is in substantial competition, it is perfectly legitimate, but if they are not in substantial competition then it is not legitimate and that is why they are stressing this question of substantial competition.

Mr. Corinblit: Regarding part of your statement, your Honor, I would like to ask the witness to restate once again——

Q. I think, Mr. Hickey, you stated that the

(Testimony of George A. Hickey.)

theatres in Hollywood and the theatres in downtown were in substantial competition, is that right?

The Court: He said they were in substantial competition on first run. [676]

Mr. Corinblit: Yes, on first run.

Q. Is that correct? A. Yes.

Q. And they played simultaneously first run, didn't they? A. That is true.

Q. You take the position that the theatres in Hollywood were in substantial competition with the Paradise Theatre, is that right?

The Court: On first run.

Mr. Corinblit: First run.

The Witness: That is correct.

Mr. Corinblit: Now, the reason, of course, in your Honor's statement with reference to first run, they are in substantial competition and in the Los Angeles area they were permitted to play simultaneously.

Mr. Mitchell: The company owns the pictures and they can play them wherever they want to unless they conspire. I guess they can sell San Diego one week and Santa Barbara a year later if they want to, if they do it without conspiracy with anybody.

The Court: That is true.

Mr. Corinblit: As a matter of fact, Mr. Hickey, when you went to—I will withdraw that.

Q. It is true, as a matter of fact, not only on first [677] run but on 21 days, you had theatres in this area that I am describing here, that played

(Testimony of George A. Hickey.)

day and date which you consider to be in substantial competition on 21 days? A. 21 days?

Q. Yes, that is, for example, between the Loma Theatre on Santa Monica and the Egyptian or the Hollywood Theatre on Hollywood Boulevard, or the Larchmont Theatre, for example, or the Fairfax Theatre. A number of those were in substantial competition—they are quite close together.

A. Well, it all depends on how close to each other they are and what availability and clearance they are running under.

Q. I am talking about the 21-day run.

A. Well, the 21-day run—you mean to downtown or Hollywood?

Q. To each other—that is the Hollywood Theatre, for example, in Hollywood, and the Loma Theatre on Santa Monica and the Larchmont Theatre on Highland—those three theatres, wouldn't you say, were in substantial competition?

A. I don't think on a 21-day run that anyone would go from Hollywood to the theatre out in the Inglewood area.

Q. No.

A. And I don't think they would go—I do think that a certain percentage would go from the Inglewood area to a Hollywood first run, and that is why it makes them in [678] substantial competition on first run.

Q. I am now talking about 21 days in this area, in the Hollywood area.

Mr. Mitchell: That is immaterial, what happens

(Testimony of George A. Hickey.)

in the Hollywood area 21 days. That is remote from this lawsuit.

The Court: Let me ask the witness a question. Mr. Hickey, it is your opinion, is it not, that theatres may be in substantial competition on first run and not in substantial competition on second run?

The Witness: That is right.

The Court: Or a third run?

The Witness: That is right.

The Court: In other words, this question of substantial competition varies with the run.

The Witness: That is right. They would if it is first run—there would be a certain percentage as I said before, going from the Inglewood area to Hollywood or downtown, whichever they chose, but they wouldn't do that on a 21-day run. So that makes the first run substantial competition but it wouldn't make the 21-day substantial competition.

Q. (By Mr. Corinblit): I appreciate that answer, sir, and I am now asking another question. Even on the 21-day run in the City of Los Angeles, you customarily permitted theatres which were in substantial competition to play simultaneously with each other in this area that I am outlining? [679]

Mr. Mitchell: In this area he is outlining is in Hollywood, and I object to it on the ground it is remote. It has nothing to do with the lawsuit. No 21-day run in Hollywood involved in this lawsuit.

The Court: Just a minute. The objection is overruled.

I noticed some years ago when I was more interested in going to motion pictures than I am now

(Testimony of George A. Hickey.)

—I was considerably younger then. I used to watch the advertisements, and I noticed that in many of the Fox theatres they played the same picture although the theatres might be within a mile or two of each other. That is, they were in substantial competition, I suppose, because of their closeness, and yet they were playing the same picture.

The Witness: Not first run.

The Court: Do you do that at MGM—did MGM play the same picture on the same run?

The Witness: On a later run.

The Court: On the later runs?

The Witness: Yes, sir, never on the first run.

The Court: Never on the first run?

The Witness: No. [680]

Q. (By Mr. Corinblit): Now, I take it you would testify Hollywood and downtown were in substantial competition. A. First run.

Q. On first run, and on first run you permitted theatres to play day and date with each other which were in substantial competition with each other?

The Court: When, Mr. Corinblit?

Mr. Corinblit: During the entire period from 1945 up to now, your Honor.

Q. In other words, you permitted the Los Angeles and the Loew's State to play day and date with each other? A. I beg your pardon. We didn't.

Q. I beg your pardon. I am sorry. I meant the Egyptian Theatre and the Loew's State.

A. The Egyptian Theatre in Hollywood and the Loew's State.

(Testimony of George A. Hickey.)

Q. Played day and date with each other.

A. Played day and date with each other.

Q. And those two theatres were in substantial competition, one in Hollywood and one downtown, on first run?

A. They were only in substantial competition in this way. As I repeated many times in every case, including this one, there is a certain number of people that will go to downtown that won't go to Hollywood from every area, and there is a certain number of people that will go to Hollywood that will [681] not go downtown in every area. There is a few that might go downtown if they have some shopping to do. They might go down to shop and they might go to a theatre downtown, and the same thing would happen in Hollywood.

Q. Then to answer the question directly, and I think you have answered it before, but I just want to make sure, the Egyptian and the Loew's State when they played first run pictures were in substantial competition?

A. I would say there is nobody in Hollywood that would leave Hollywood to go downtown. There is nobody downtown that would leave downtown to go to Hollywood.

Q. Then is it your answer that they were not in substantial competition?

A. Well, it is and it isn't. It is too far away to be substantial competition.

Q. That is, it is too far between Hollywood and downtown to be substantial competition?

(Testimony of George A. Hickey.)

A. Yes. It is too far away and they have different areas to draw from.

Q. All right.

A. Downtown would draw from Pasadena. Hollywood would not.

Downtown would draw from Glendale. Most people would go down—well, there might be a division in Glendale. Some of them might go to Hollywood. Some of them might go downtown. [682]

Q. Is this correct, that your statement is that Hollywood and downtown were not in substantial competition?

Mr. Mitchell: He just said they are and they aren't, your Honor. It is not that simple. He has just answered that question. I object to it on the ground it is asked and answered.

The Court: I am wondering this. We have got a witness here who has 30 odd years in the motion picture business, and he says they are and they aren't in substantial competition.

We have got a jury here that never heard of the distribution problems of the motion picture industry until last week. How can they answer this question of whether theatres are in substantial competition after being educated for 20 or 30 days, if we have got a witness with 30 some years who can't answer the question, are they or are they not?

He said they were, and he said they were two or three different times. Now are you trying to get him to say they weren't?

(Testimony of George A. Hickey.)

Mr. Corinblit: No, sir. I want to make sure what the answer was.

The Court: He has told you a half dozen times in his opinion the theatres in downtown Los Angeles and Hollywood were in substantial competition.

Mr. Corinblit: All right.

Q. On August 31, Mr. Hickey, you wrote Mr. Marco Wolff a letter——

The Court: Mr. Corinblit, when you say August 31st, it doesn't mean anything. Complete the date.

Mr. Corinblit: Yes, sir.

Q. On August 31, 1950, you wrote Mr. Marco Wolff a letter. I don't recall whether the defendants have offered it in evidence. It is Plaintiff's Exhibit 6-O. I would like to offer that in evidence at this time.

The Court: It may be received.

Mr. Mitchell: That is already in evidence, I believe. Loew's D-3, unless you want to have two exhibits with the same number.

Mr. Corinblit: I think we ought to have it in as a plaintiff's exhibit, your Honor.

The Court: All right, 6-O may be admitted in evidence.

The Clerk: 6-O.

(The exhibit referred was received in evidence and marked as Plaintiff's Exhibit 6-O.)

Mr. Johnston: Is it my understanding that this exhibit is already in evidence?

Mr. Mitchell: That's right. [684]

* * * * *

(Testimony of George A. Hickey.)

Mr. Corinblit: I would next like to offer in evidence the portions of Exhibit 6-P, except those that have been excluded, and read that to the jury, if I may. I will offer in evidence 6-P.

The Court: It may be admitted in evidence, that is, all except the excluded part.

The Clerk: 6-P.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-P.)

* * * * *

The Witness: May I answer that?

Q. (By Mr. Corinblit): Yes, sir, there will be questions which will give you that opportunity in a moment, if I may.

Now, it is a fact, is it not, that you told Mr. Schreiber and Mr. Wolff, for that matter, when you refused to permit them to play 7 days day and date with Inglewood, that is simultaneously with Inglewood, when you told them that, the reason that you gave to them at the time was substantial competition between the Academy and the Paradise, is that correct? That is the reason you gave, substantial competition?

A. Well, they are in substantial competition, but they were bidding in Inglewood at the time, and I told him he could also bid, if he wanted the 7 day run.

Q. But my question is when you refused to permit the Paradise Theatre to play on a 7 day availability day and date with the Academy, that is at the same time as the Academy, the reason that you

(Testimony of George A. Hickey.)

gave to Mr. Schreiber and to Mr. Wolff was that the two theatres are in substantial competition? That is the reason you gave them, is that correct?

A. No, I don't think it was. I think the reason I gave them is because all theatres in Inglewood was in substantial competition with the Paradise and they were bidding, and if he wanted that privilege we would be very happy to give it to him, [688] which we did.

The Court: Let's consider the Inglewood situation for a moment, the theatres in Inglewood, and let's consider a theatre outside of Inglewood that was not in substantial competition with Inglewood. Would you require such a theatre to bid against Inglewood?

The Witness: Not if it was not in the same area, your Honor.

The Court: So you only required bidding where there were theatres in substantial competition.

The Witness: That is correct, the same area.

The Court: Then it is your opinion that the Paradise was in substantial competition with Inglewood?

The Witness: Definitely.

The Court: And that is why you required a bid?

The Witness: That is so.

Mr. Corinblit: I think you have had the question answered, your Honor, that I was looking to.

Q. I think we ought to explain to the jury the result of not permitting the Paradise to play simultaneously. It is true in the motion picture industry,

(Testimony of George A. Hickey.)

isn't it, Mr. Hickey, when you sell pictures to a first run theatre, you get more money than you get from a second run theatre, ordinarily?

A. Generally speaking, yes.

Q. When you sell pictures to a theatre on an early [689] availability, you get more money than when you sell pictures to a theatre on a later availability, generally speaking?

A. Well, it doesn't always happen that way.

Q. I know it doesn't always happen, but I am asking whether it is generally true.

A. Well, I could give you a long story on that. If we were using the two show cases, as we were for some time, and we had the time and the proper theatres to run it and advertise it properly, the theatres running after them would do a tremendous business because of the advertising that we would give them in the show cases.

Since we went into the multiple runs, we take pictures cold and we put them in 11 theatres at one time. The picture comes and goes before anybody knows anything about it, and the picture—the theatres that run after that will sometimes do a lot more business than some of the theatres in the multiple run. [690]

Q. Now, if you could, without regard to that example you have given, if you—if it is not possible to state the answer generally, well, then, we can't get it.

A. I just can't hear you.

Q. The question is, Mr. Hickey, whether generally when you sell a picture you, in your opinion,

(Testimony of George A. Hickey.)

try to get more money from a theatre on an earlier availability than you get from a theatre on a later availability. Just answer that simple question.

A. Yes, that is true.

Q. All right. Now, similarly——

A. It all depends on the theatre and the seating capacity, and what kind of theatre it is, of course.

Q. Yes, I appreciate that. Now, similarly, the reason you try to get more money is that the later availability ordinarily is of less value, or I will put it this way, the earlier availability is more valuable to a theatre in terms of getting more gross into the theatre than the later availability, isn't that correct?

A. No, it is not correct.

Q. Well, as a general matter?

A. No, no. I wouldn't say that. On buying a picture—you take for instance we just run a picture in the Paramount Theatre downtown, we run the picture for six weeks. It was *Meet Me in Las Vegas*. The picture didn't do [691] the business that we thought it was going to do and we spent a great deal of money advertising it.

One of the reasons that it didn't do the business that we thought it was going to do was because we didn't have a Hollywood run—we didn't have a Hollywood theatre to put this in as an exclusive run. We put it out for bids and it so happened that Paramount Theatre downtown had the best bid.

I was sorry they got the picture but they had the best bid so we had to give it to them, because downtown is not a good place for amusement and the

(Testimony of George A. Hickey.)

Paramount Theatre is not too good anyway because of the location.

Now, the picture didn't do what we thought it was going to do and we were a little afraid of it. But when that picture got out in the territory the word of mouth advertising gave that picture a great boost and we done tremendous business in the territory, in all runs, and we are still doing it on that picture.

Q. Well, a few moments ago I understood you to testify that you try to get more money from a theatre with an earlier availability than from a theatre on a later availability? A. We do——

Q. And the reason for that is, ordinarily, you expect that a theatre on an earlier availability will gross more than a theatre on a later availability?

A. Yes, but I did say it didn't always prove out that way.

Q. Right. I appreciate the exceptions. The point is, I am talking generally. Generally it is true.

Now, it is also true from a point of view of a theatre, for the same reason a theatre man who is on a late availability, when he moves up to an earlier availability because he is getting something more valuable, will ordinarily pay you more film rental, ordinarily, subject to exceptions?

A. Well, that is good to listen to but it don't work out that way. You know there are a lot of people — they don't understand our business. They would think you are right if they heard you but you are not right. You are wrong in many cases. When

(Testimony of George A. Hickey.)

we move up a clearance in some theatres they do less business than they did when they—if we move up, for instance, a theatre from 21 days to 14 days, a great many times that theatre does less business than they did on the 21-day run.

The Court: Mr. Hickey, isn't that primarily because they charge more money on a 14-day run than they do on a 21-day run? Doesn't that have something to do with it, the price of admission?

The Witness: Well, the price of admissions—some theatres charge 85 cents. Other theatres charge 50 cents. 60 cents. There are a lot of theatres. For instance, the [693] Baldwin Theatre. They went to a 50-cent run. Their admission is 50 cents.

The Court: What run was that?

The Witness: That was, I believe, a 21-day run, if I am not mistaken. I think it was a 21-day run.

Well, they did a lot more business at 50 cents than other theatres in the same run. They did a lot more business than some of the theatres that run it 14 days but that was on account of their admission price.

Q. (By Mr. Corinblit): All right. Now, without regard to the admission price, however, isn't it generally accepted in the business that just as you, as a distributor, try to get more money from an earlier availability than you get from a later availability, a theatre man ordinarily has got something more valuable which he has by reason of an earlier availability as distinguished from a later availability?

A. Sometimes he has.

(Testimony of George A. Hickey.)

Q. As a general matter?

A. Sometimes he has and sometimes he don't. Not generally speaking, no.

Q. You can't say one way or the other?

A. Yes, I can, because I have an experience that teaches me that sometimes those in the 21-day run is liable to get more money on a picture like *Meet Me in Las Vegas*, [694] for instance. They will do more on the 21-day run than the first run and the second run and the third run.

Q. Mr. Hickey, you are familiar with, aren't you, the Westchester area. There are two theatres, the Loyola Theatre and the Paradise Theatre?

A. That is true.

Q. Now, don't you know that the Loyola Theatre playing on first run grossed probably twice or three times—twice as much as the Westchester—as the Paradise Theatre playing on a later run?

A. Well, most any theatre out there would gross more than the Paradise Theatre.

The Court: Most any theatre?

The Witness: Most any theatre in the Inglewood area would gross more than the Paradise Theatre.

The Court: Why?

The Witness: Well, I told Mr.—I told the gentleman that owns the Paradise Theatre one day—I didn't hesitate a bit to tell him what I thought about it.

He has a bowling alley in that theatre. He built a theatre with a bowling alley in it, and I told him if he paid as much attention to the theatre as he did

(Testimony of George A. Hickey.)

the bowling alley, the theatre would do more business. I told him that one day in my office. And I don't think they give the theatre the right kind of attention. [695]

The Court: Then it is a management problem.

The Witness: I think so. Well, you see, your Honor, we have a lot of difficulties sometimes with theatres.

I have known—I have complained to the owners of circuits that the manager in such and such a theatre wasn't a good manager; he was costing us a lot of money. He wasn't running the theatre properly. He wasn't taking care of the patrons going to that theatre. And that cost us a lot of money.

There are a lot of things in our business that people don't understand and sometimes I get confused myself. I don't understand them.

It is really heartbreaking to see the way some of the pictures are run.

We make pictures, big pictures, and if the picture is a hit in a theatre, they do a great business, the manager goes around in the theatre and pats himself on the shoulder and says, "I am a great manager, I did a great business."

Well, he don't say anything about us making a great picture, but if the picture flops and it don't do any business then he says the studio doesn't know how to make pictures.

"Why don't you do this and that." We have all kinds of trouble with the managers.

Q. (By Mr. Corinblit): Mr. Hickey, I would

(Testimony of George A. Hickey.)

like to ask you just one or two questions about this fact I think [696] you have mentioned now for the first time.

Did I understand the reason you didn't sell the Paradise first run or 7 days was because you had a complaint about the management?

A. No, that isn't the reason.

Mr. Mitchell: There isn't any such evidence that they refused 7 days. They always made 7 days available to him, and I object to the question on the ground it assumes a fact not in evidence.

The Court: They made 7-day availability on bidding.

Mr. Mitchell: That is correct.

The Court: Don't forget the bidding part of it.

Mr. Mitchell: Absolutely not.

Mr. Corinblit: I would like to have the question answered, if I may, your Honor.

The Witness: I said no.

Mr. Mitchell: That requires him to answer something not in the record.

The Court: The witness said he answered the question and the answer was no. He apparently understood the question.

Q. (By Mr. Corinblit): And the reason you gave that answer was because you refused to permit first run or 7 days day and date even before that theatre opened and you hadn't the remotest idea about the management, isn't that right?

A. We never make any deals with anybody before a theatre [697] is built and opened. Who could

(Testimony of George A. Hickey.)

I make a deal with? If the theatre is not built, the theatre is not open, who are you going to make a deal with? The ground?

Q. In fact, when the theatre was constructed and ready for opening and when they asked you for first run or for 7 days, you turned it down again without—— A. Definitely.

Q. Without having the remotest idea about the management of the theatre, isn't that right?

A. That is true. What he should have done and what I wanted him to do was to bid for the pictures so we could get a slant on his house, so we would know what he was capable of grossing.

And you spoke about the Loyola Theatre, pictures running in the Loyola Theatre.

Metro-Goldwyn-Mayer pictures do not run in the Loyola Theatre and did not run in the Loyola Theatre. We had a couple of pictures that were problem pictures that nobody in the city wanted. We couldn't sell them anywhere.

So we were glad to get the Loyola Theatre to run them and they run both pictures together on a double bill.

I have four pictures now that nobody wants, and I would be glad if the Paradise Theatre would take the pictures on their first run in the city and run them double bill, but the Paradise don't want them. So, what am I going to do? [698] I can't do anything because I have no place to put them.

Q. (By Mr. Corinblit): Mr. Hickey, I think

(Testimony of George A. Hickey.)

just a moment ago you said that the Loyola does not run Metro-Goldwyn-Mayer pictures.

A. That is true.

Q. The picture Blackboard Jungle played in the Loyola Theatre?

A. That is one picture and these other two pictures, but they bid for it and they are in the same area that the Paradise Theatre is in and that the other theatres in Inglewood is in. It is in that area and everyone in that area had a chance to bid for it. They got it and they run it.

Paradise had the same chance. They were asked to bid at the same time with the Loyola. We don't discriminate. We have nothing to hide, nothing at all.

Q. Mr. Hickey, when you refused to permit the Paradise—when you refused to permit the Paradise Theatre in 1950 to play day and date with the Academy, in fact, you knew that if the Paradise instead of playing on 21 days could play on 7 days, it would receive a larger gross in its theatre, isn't that correct?

A. Well, it might. I don't think there is any doubt about that.

Mr. Mitchell: Wait a minute. Don't interrupt him. [699] What did you say?

The Witness: It might because there would be nobody else in the area running it if they got it.

Q. (By Mr. Corinblit): And if they got a larger gross and you were charging 40 per cent or 35 per cent for your pictures, you would have gotten that

(Testimony of George A. Hickey.)

additional revenue from the Paradise, isn't that right?

A. That is right. Why don't he bid for them and do it?

Q. Now, therefore, when you denied the Paradise the right in 1950, to play on an equal availability with the Academy——

A. I didn't deny them——

Q. On an equal availability—I am talking about playing day and date.

A. Equal availability. I told him he could bid.

Q. My question is, when you refused to permit the Paradise to play day and date with the Academy you were actually refusing to take—you were actually making a decision which was against the best interests of your company, isn't that correct?

A. No, it wasn't. I never do anything against the best interests of my company. If I had played—if I played two theatres that are substantially competitive like the Inglewood and the Academy Theatre, and we will just take a picture—— [700]

Mr. Mitchell: You mean the Inglewood and the Academy?

The Witness: The Paradise. Pardon me. The Academy and the Paradise.

We will just take a figure and say if the picture was played alone in the Academy Theatre, it would do \$10,000. I venture to say, due to the fact that these two theatres are in substantial competition, that it would split that gross in two for each one of those theatres. Some of them would go to the Para-

(Testimony of George A. Hickey.)

dise and some of them would go to the Academy. How many would go to each theatre, I don't know, but it would put each theatre in the red. Neither one of the theatres would make money, and we would be fighting two overheads instead of one. I am not silly enough to make that kind of a decision, and if I was, I wouldn't be with this company for 31 years.

Q. (By Mr. Corinblit): Mr. Hickey, you have stated now, I believe, an opinion that if the Academy Theatre and this—I take it you have stated what was your opinion, that if the Academy Theatre had grossed \$10,000 a week, and then you had permitted the Paradise Theatre to play simultaneously, that they would have split the gross so that there would have been a gross of \$5,000 a week in the Academy and \$5,000 a week in the Paradise.

A. I didn't say \$5,000 a week in each one. I said they would split it. How much each one would take would depend on [701] how much the other would do. I couldn't say exactly, but they would split the \$10,000.

Q. Now, converting that into people, is it also your opinion that if there were 10,000 people a week that went to the Academy and then the Paradise played simultaneously, that the two theatres would split the patrons, is that correct?

A. Well, they would split—some would go to the Academy and some would go to the Paradise. How many, I couldn't tell you that. I am not smart enough for that.

(Testimony of George A. Hickey.)

Q. As a matter of fact, did you have any opinion as to whether it would be as little as 50 people?

A. I wouldn't say. I wouldn't attempt to say that.

Q. You couldn't say whether it was 50 or 100 or 150 or 200, could you?

A. No, but I would say this, that the people close to the Paradise, living close to the Paradise Theatre on both sides, whether it would be in Inglewood or Los Angeles, would probably go to the Paradise.

Those that lived close to the Academy would probably go to the Academy. But there is a lot of people that prefer a certain theatre. They like to see pictures in a certain theatre. Those people would go to the theatre they liked the best, but the patronage would be divided.

Q. Now, you wouldn't say that if the patronage was divided so that the Academy only lost 50 people, that in that [702] situation the Paradise and the Academy were in substantial competition, would you?

The Court: What is substantial competition? We had one witness here who said 20 per cent was substantial competition. I don't know what substantial competition is. Substantial competition in my mind depends a great deal upon the proximity of the theatres. If they are close together, they are in substantial competition. If they are five miles away, I don't know whether five miles is substantial competition or not.

(Testimony of George A. Hickey.)

Mr. Corinblit: Your Honor, there is a very simple way to check, and that is why we have read the letter into evidence, that is to say, if you have a theatre which is grossing \$10,000 a week, as Mr. Hickey says, and you play another theatre simultaneously, and the gross is not affected substantially of the theatre playing the exclusive, then you have some pretty good evidence whether those two theatres are in substantial competition. That is why I am asking Mr. Hickey whether or not if the gross was only affected to the tune of 50 people, whether it would be substantially competitive.

The Court: You asked Mr. Hickey whether they ever did try to determine whether or not there was substantial competition by the trial and error method. He said they were in substantial competition. [703]

I might say to the jury this is a question for you to decide. You don't have to take the testimony of any witness. You don't have to believe Mr. Hickey or you don't have to disbelieve him. You don't have to believe the testimony of any witnesses. You don't have to take my definition. You are the ones who are going to decide whether or not these theatres are in substantial competition.

Mr. Corinblit: I think, your Honor, I have no further questions.

The Court: Well, I suppose you will have a considerable number of questions?

Mr. Mitchell: There will be more than 10 minutes.

(Testimony of George A. Hickey.)

The Court: Maybe we better take our recess now.

Mr. Mitchell: I think it would be well.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until this case is finally submitted to you.

With that admonition, we will now recess until 10 minutes after 3:00.

(Recess.) [704]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Westbrook: Yes, your Honor.

The Court: You may proceed.

Mr. Corinblit: Your Honor, I am a little uncertain as to where we are.

This witness was called on cross examination and we have had redirect and this was recross. Is this re-recross that we are about to go into?

The Court: I don't know. I don't know, but I think maybe you opened up some avenues of approach that Mr. Mitchell hadn't anticipated you were going to, so I think he has a right to explore those avenues according to his own desires and wishes.

I will permit it, Mr. Mitchell.

Mr. Mitchell: Thank you.

(Testimony of George A. Hickey.)

Recross Examination

Q. (By Mr. Mitchell): You said that at times you were suspicious and at other times you learned that exhibitors were dividing up the product of the various distributors among themselves.

What would make you suspicious that the exhibitors were dividing up the various distributors' product? [705]

A. Well, when you get—when you put out bids and you only get one bid in an area, then you get a little suspicious and you figure that there is something going on in the way of dividing up our product.

Q. All right. Now, Mr. Corinblit asked you some questions about the Inglewood 7-day run in late January 1950, and in February 1950, and he pointed out to you that United Artists Theatre in Inglewood was the only bidder on these pictures in those two months, Loew's pictures—Tension, That Forsyte Woman, Malaya, East Side, West Side and Ambush. Did that make you suspicious with respect to any division of product at that time?

A. In the United Artists?

Q. Yes. A. Yes.

Q. Because why?

A. Because they were the only one that bid on them.

Q. All right. Now, I went over with you an exhibit which had been prepared under your direction, Loew's Exhibit K-1, as to the Loew's play of its 7-day run in Inglewood from May 1, 1950 to Sep-

(Testimony of George A. Hickey.)

tember 18, 1951, and commencing with the picture The Big Hangover, which was offered by Loew's on May 9, 1950, this exhibit shows as you recall, that the La Tijera and the Academy bid for that picture; for the next picture the La Tijera and Fifth Avenue and United [706] Artists bid; for the next picture the La Tijera, United Artists and Academy bid.

The next picture the La Tijera, the United Artists and Fifth Avenue bid.

The next picture the La Tijera, United Artists and Academy.

The next picture the La Tijera, United Artists, Fifth Avenue and Academy and so on.

Now, does that kind of bidding indicate anything to you as to whether or not there was at that time a division of product?

Mr. Corinblit: Your Honor,——

The Witness: No.

Mr. Corinblit: I object to that as calling for a conclusion of the witness.

The Court: Objection overruled.

Q. (By Mr. Mitchell): What was your answer?

A. No, it didn't. It proved to me that there was no agreement among them then of any division of product because the Academy would get one picture and the next time the La Tijera would get another and then the Fifth Avenue would get another and so on. So, there couldn't be any division between them then and it proved to me that there was none at that time. [707]

(Testimony of George A. Hickey.)

Q. All right. Now, let's turn to the time when the Paradise opened. Loew's Exhibit K-1 shows that the picture *Life of Her Own* was offered by Loew's on September 11, 1950; that the Paradise, La Tijera, United Artists and Academy bid.

Then *Toast of New Orleans*, that the United Artists and Fifth Avenue bid.

Then *Right Cross*, and that the United Artists and Fox bid.

Then the *Devil's Doorway*, that the United Artists and Fox bid.

The *Next Voice You Hear*, that the Paradise, United Artists and Fifth Avenue bid.

Miniver Story, that the Paradise, La Tijera, United Artists and Fox bid.

To Please a Lady, that the Paradise, La Tijera, United Artists and Fifth Avenue bid.

King Solomon's Mines, that the Paradise, La Tijera, United Artists and Fifth Avenue bid.

What does that indicate to you as to whether or not there was a division of product among the exhibitors?

A. Well, that proved to me that there was no division at that time in that period, 1950 and 1951.

Q. Where there is a division of product among exhibitors, is there any way that one exhibitor wanting to break it up can do so in a bidding situation?

A. Oh, yes.

Q. How? A. They can just bid on it.

Q. And that ends the division?

A. That ends it.

(Testimony of George A. Hickey.)

Q. Is that right? A. That's right.

Q. The testimony that you were giving in the Metropolitan case that was read to you, did that have anything to do with Inglewood in 1950 and 1951?

A. No. That was in 1953. It had nothing to do with 1950 and 1951.

Q. Nothing to do with Inglewood?

A. Nothing to do with Inglewood.

Q. Now, some questions were asked you by Mr. Corinblit about an experimental run in a theatre. At the time the Paradise opened in August 1950, were the theatres wanting to play the 7 day run in Inglewood then bidding? A. Yes.

Q. How long had they been bidding?

A. Oh, they were bidding long before the Paradise was ever built.

Q. Who started that bidding out there?

A. Well——

Q. If I name the theatres that were bidding, maybe you [709] can tell me: The La Tijera, United Artists, Academy, Fifth Avenue, Fox Inglewood.

A. The La Tijera asked for bidding.

Q. Is that another so-called independent exhibitor?

A. That was an independent exhibitor, so we granted him the privilege to bid.

Q. When the Paradise comes along, why don't you give him an experimental run in this situation?

A. You can't have any experimental runs in bidding situations.

(Testimony of George A. Hickey.)

Q. Why not?

A. Well, because he would have to bid for it. If he bids for it, then we will know what his theatre will do, but he wouldn't bid. Very seldom would he bid for a picture.

Q. He never did bid enough?

A. He never did bid enough. Now, you take, for instance, during that time, if I remember correctly, the Academy bid on the picture and they guaranteed us \$4,025. I think that is correct. The United Artists bid \$2,750, I think that is correct, on the same picture. We took the Academy bid because the Paradise bid 14 days at 40 per cent, and the best bid was the Academy bid, and the next best bid was the United Artists bid.

But the Academy guarantee was more than the Paradise could gross. So I took the Academy bid and the guarantee, because [710] we were sure of \$4,205.

Q. Could the Paradise have got a picture out there on the bid?

A. If he bid enough, yes, if he bid more than the Academy, he could have got it.

Q. Did you ever refuse the Paradise the right to get the 7 day run by bidding for it and winning it?

A. No, sir.

Q. Did you ever offer the Paradise the right to play a 21 day run without any bidding at all?

A. Yes.

Q. Was there any theatre in Inglewood that

(Testimony of George A. Hickey.)

could play day and date with that 21 day run under your then clearance system?

A. I don't recall that at this time without looking at the records.

Q. Did Mr. Schreiber accept your offer to give him a 21 day picture and let him run it without any bidding at that time when he opened, or shortly after?

A. I think he did. I think he run a picture at 21 days.

Q. He could have a picture any time he wanted to without bidding on 21 days? A. Yes, sir.

Q. Now, I will turn to first run Los Angeles and this [711] matter of multiple first runs vs. the showcasing of pictures. What in your opinion does a multiple first run do to the prestige of a picture?

A. Well, when you compare it with a run downtown and a run in Hollywood, it hurts us. We don't like it.

I would like right now to run the Loew's State Theatre downtown and get—I would love to get the Chinese Theatre in Hollywood.

Q. You just want the best.

A. Yes, I want the best, and that is the best theatre in Hollywood. I wanted that when I had the Egyptian. I would have preferred the Chinese, because in my opinion the Chinese Theatre is one of the finest theatres in the state.

Q. What would that do for the prestige of a picture to have a show case in the Loew's State and the Chinese, let us say?

(Testimony of George A. Hickey.)

A. It would give us the opportunity to advertise the picture properly and make it more valuable for the multiple runs and all runs after that.

Q. What does the multiple run do to the overall payoff of a picture?

A. Well, the multiple runs, to my way of thinking and my experience with them, is that it isn't a good way to distribute your pictures. The pictures go into 11 or 12 theatres—11 theatres, and the picture is in and out before the [712] public really knows how good the picture is, and we have to then depend upon the picture doing business in the other houses beyond that after that.

The multiple runs we don't like. We don't like—there are two things in this business we don't like. We don't like bidding for the first thing. We never asked for it and we don't like it.

We don't like multiple runs because we don't get a chance to properly advertise and exploit our pictures so as to make them valuable throughout the territory.

We don't depend upon the revenue that we get out of the show case runs. That is the least of our troubles and thoughts. When we depend upon is to put them into two show cases in this city, one downtown and one in Hollywood, and advertise them properly so we can get all the money that we are entitled to out of all the neighborhood houses, and the houses in and adjacent to the city of Los Angeles, and in doing that we can be very successful.

But in shoving pictures into 11 houses, drive-ins

(Testimony of George A. Hickey.)

and hard-top houses, and I mean by hard-top houses theatres, regular theatres—we call them hard-top houses. The picture goes in. It is advertised this week and it opens up next week. It is played and gone and nobody knows anything about it.

It costs us a lot of money and I don't like it, and [713] if there was a house in Hollywood that I could get, I would go right back to the two show cases right tomorrow.

Mr. Mitchell: That's all. [714]

Mr. Corinblit: There are only two questions, your Honor, that I would like to ask.

The Court: Very well.

Redirect Examination

Q. (By Mr. Corinblit): I want to show you, Mr. Hickey, first may I have Exhibit 46-A-4?

I want to show you this Exhibit, 46-A-4, Mr. Hickey, which is the record of the play-off of first run in Los Angeles 1949 to 1951.

I want you to look at it and particularly look at the play-off beginning with the picture Asphalt Jungle. Downtown it played the Orpheum and Hawaii. Is that the time—I think you testified to this, but I want to get absolutely straight, is that the time you began bidding first run downtown, the Orpheum and Hawaii, when they played this picture? They bought that on bid?

A. I don't know whether that was the first picture or not, but this was bought on a bid.

(Testimony of George A. Hickey.)

Q. Well, can you take a look at it and see?

A. Well, I couldn't remember whether that is the date or not.

Q. I think you testified to that under Mr. Mitchell's examination. [715]

Now, I wanted to show you the testimony that I read into evidence from the Metropolitan case when you testified about collusion, and I want to call your attention——

Mr. Mitchell: Now, that is an ugly word for exhibitors dividing up product and I object to the characterization.

Mr. Corinblit: Well, it is in the deposition.

The Court: Overruled.

Q. (By Mr. Corinblit): It is Mr. Hickey's statement.

This question—this is already in evidence, but can you give me an idea——

A. Pardon me. What date is this?

Q. This is 1949 and the date of the bidding is June of 1950 first run. A. This is '53.

Q. All right. Now, I want to call your attention to your question and answer already in evidence:

“Can you give me an idea whether it was ten years ago or two years ago?

“A. No, it wasn't ten years ago. It was within the time we started to bid.”

Now, you remember that, don't you?

A. What are you referring to?

Q. Your reference here to the time “we started

(Testimony of George A. Hickey.)

to bid first run downtown" and that is with reference to the date of June 1950 when the Orpheum and the Hawaii began to [716] bid. Do you deny that?

A. No, I don't deny it if it is in there, but I don't exactly understand what you are talking about.

Q. All right. I think that is all.

Mr. Mitchell: May Mr. Hickey be excused?

The Court: Yes.

Mr. Corinblit: Yes.

The Court: You may be excused.

Call your next witness.

Mr. Corinblit: We will call as an adverse and hostile witness Mr. Bert Pirosh.

BERT PIROSH

called as a witness by the plaintiff under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

The Clerk: State your full name.

The Witness: Bert Pirosh.

The Clerk: Is that spelled B-e-r-t?

The Witness: Right.

Direct Examination

Q. (By Mr. Corinblit): Mr. Pirosh, by whom are you employed?

A. Fox West Coast Theatres and National Theatres. [717]

Q. How long have you been employed by those two companies? A. Since 1937.

(Testimony of Bert Pirosh.)

Q. What is your position?

A. I am a film buyer.

Q. Are you the chief film buyer now?

A. Yes.

Q. In 1949, and '50 and '51, you were also employed by the defendants, is that correct?

A. That is correct.

Mr. Mitchell: By whom? By the defendants?

Mr. Corinblit: Yes.

Mr. Mitchell: He doesn't mean he was employed by all of the defendants.

Q. (By Mr. Corinblit): By whom were you employed at that time?

A. Fox West Coast Theatres and National Theatres.

Q. Now, when in 1949, '50 and '51—you were also a film buyer at that time, isn't that correct?

A. That is correct.

Q. And you were in charge of the booking department as far as Fox West Coast was concerned, is that correct?

A. In Southern California.

Q. In Southern California? A. Yes. [718]

Q. Now, you are aware—I will withdraw that.

In about 1949 you became aware, did you not, that Fox and United Artists Theatres Circuit were terminating their joint interests in certain theatres in California, is that correct?

A. I understood then that it was being contemplated.

Q. And you learned that certainly in the spring of 1949, is that correct?

(Testimony of Bert Pirosh.)

A. Spring or summer.

Q. Now, in the fall of 1949, in September or October or August, you had a conversation with a representative of United Artists Theatres Circuit, Inc., Mr. Pat DiCicco, did you not?

A. I had several conversations with Mr. DiCicco.

Q. Mr. DiCicco at that time was the general manager of the United Artists Theatres Circuit, Inc., is that correct?

A. I don't know what his job was at that time.

Q. Well, what did he do as far as the theatres were concerned?

A. Well, I don't know. In 1949 we were operating Fox West Coast or United West Coast Theatres were operating the United Artists Theatres.

Q. Now, the discussions you had in August, September or October, 1949, were some place in the Fox West Coast [719] offices, is that correct?

A. I think that is correct.

Q. Now, at one of these meetings, Mr. DiCicco stated to you that the United Artists Theatres was probably going to be operated or that Fox West Coast Agency would no longer be operating, buying or booking for the United Artists theatres at some time in the near future, isn't that correct?

A. Which United Artists theatre?

Q. The one in Inglewood.

A. That is right.

Q. He told you that? A. Yes, sir.

Q. And then he told you that when that hap-

(Testimony of Bert Pirosh.)

opened he intended to operate that theatre on a 7-day availability, is that correct?

A. He said that was his intention.

Q. Now, up to that time the United Artists Theatre was generally operating on a 14-day availability, is that correct?

A. I think it was operating either on a 7 or the 14-day availability.

Q. And at that meeting you told Mr. DiCicco that you thought he was making a mistake; that he would make more money on 14 days but DiCicco said he was going to operate it on 7 days, is that correct? [720]

A. He said that he was going to try to.

Q. Now, at that time, the time of that meeting, you recall that most of the distributors were offering their pictures on a competitive basis in Inglewood?

A. That is right.

Q. And is it a fact that Mr. DiCicco asked you not to bid on Leow's pictures?

A. Well, I think before I can answer that question I have to go back a few months to give you an idea of what the current situation was in Inglewood generally.

Q. Mr. Pirosh, I am sure that your counsel will ask you a great many questions and will permit you to develop the point for the defense.

I would just like—I would appreciate it if I could just get an answer to these questions for the moment.

(Testimony of Bert Pirosh.)

Now, my question to you is this: Did Mr. DiCicco ask you at one of these meetings not to bid on Loew's pictures? A. Yes, he did.

Q. And did he tell you that he wanted to bid on them for the United Artists Theatre?

A. I will have to correct my answer to your previous question.

At the time I talked to Mr. DiCicco we were still operating the United Artists Theatre in Inglewood.

Mr. DiCicco asked me if we would make all bids on Metro pictures in Inglewood on behalf of the United Artists Theatre so long as we were continuing to operate in the town and I agreed.

Q. Mr. Pirosh, did you give your deposition in the case? A. Yes, sir.

Q. And have you signed that deposition?

A. No, sir.

Mr. Corinblit: Do we have an executed copy of the deposition?

Mr. Johnston: I have a copy. You may use the deposition if you care to without his signature.

Mr. Corinblit: Well, your Honor, I would ask that the witness be requested to execute the deposition so that we can——

Mr. Johnston: And I will ask that your plaintiff sign his deposition at the same time.

Mr. Corinblit: Yes, we will sign the deposition, counsel, before a witness takes the stand.

Mr. Johnston: Before you ask us to sign one,

(Testimony of Bert Pirosh.)

I would just as leave have your people sign their depositions also.

Mr. Corinblit: We will pass this for the time being, your Honor.

Mr. Johnson: What are you talking about with respect [722] to this deposition?

Mr. Corinblit: With respect to the deposition of Mr. Pirosh?

Mr. Johnston: Yes.

Mr. Corinblit: I am speaking with respect to Mr. Pirosh.

Mr. Johnston: What page?

Mr. Corinblit: On page 7.

Q. Were you asked this question and did you give this answer:

“Now, what else was said—what was said about bidding or no bidding for product in the Inglewood area at that time?

“A. I believe at that time most of the distributors were offering their pictures in Inglewood on a competitive bidding basis.

“Mr. DiCicco asked me, as I recall it, not to bid on Loew’s pictures; that he wanted to bid for them in the United Artists Theatre.”

Were you asked that question and did you give that answer?

A. Yes. I am trying to explain, Mr. Corinblit, that Mr. DiCicco had a twofold request. He requested us to make any bids on Loew’s pictures

(Testimony of Bert Pirosh.)

while we continued to operate the theatre, which was for another five or six months as it turned out, on behalf of the United Artists Theatre and [723] after that he made the further request that after United Artists Theatres Circuit was operating the theatre, that then he wished us to refrain from making any bids on Metro pictures. [724]

Q. So he did ask you not to bid on Loew's pictures.

A. That is correct.

The Court: May I ask a question? At this time you were operating United Artists. You were also operating some other Fox theatres?

The Witness: Yes, sir.

The Court: Did he request you not to bid for Loew's pictures for all Fox theatres, or just for United Artists?

The Witness: In Inglewood, your Honor, we were operating the Academy Theatre, the Fifth Avenue, Fox, and the United Artists theatres. He said it was his intention after he commenced operating his theater to try to get the Loew's pictures in the United Artists Theatre on the 7 day availability.

The Court: Exclusively?

The Witness: Exclusively in the Inglewood area. Loew's was offering only one run in that area.

I agreed so long as we were continuing to operate the theatre we would make our offer for Loew's product on behalf of the United Artists Theatre. We had the majority interest in the theatre and if the theatre made money, we would make it.

The Court: After the theatre was turned over

(Testimony of Bert Pirosh.)

to United Artists, were you not to bid for Loew's picture for [725] the other Fox houses?

The Witness: Well, I tried to tell Mr. Corinblit it was hard to answer this question without going back into the background and he wouldn't let me do it that way, so without understanding what had transpired in Inglewood in the few months preceding this conversation with Di Cicco, it is impossible to understand this evidence.

The Court: You agreed not to bid for Loew's pictures. Did you agree not to bid for United Artists, or did you agree not to bid for all other Fox theatres? That is what I am trying to get at.

The Witness: There was no agreement. As long as things were in the state they were in in Inglewood at that time, your Honor, and I am not permitted now, I guess, to elaborate, I told Mr. Di Cicco he could go ahead and negotiate with Loew's on behalf of the United Artists Theatre, and until conditions changed I would put in no offers at the Academy or the Fifth Avenue or the Fox, yes, sir.

The Court: All right.

The Witness: There is quite a bit of background for this.

Q. (By Mr. Corinblit): At that meeting with Mr. Di Cicco, he told you if he got Metro pictures, he would not bid against you for Paramount pictures? Didn't he say that?

A. I don't recall his saying that. [726]

Q. You don't recall that he didn't say it?

A. I am pretty sure he didn't say it.

(Testimony of Bert Pirosh.)

Q. That he didn't say it. You know subsequently he did not bid for Paramount pictures?

A. Well, I think what Mr. Di Cicco did say was that if he were able to get the Loew's pictures, which were very good pictures in those days, for the United Artists Theatre, he would probably be able to operate the theatre on Loew's product exclusively. That was his hope, in any event.

Q. During the short period of time after the conversation, and there are some other elements of the conversation that we will come back to, during a short period of time after this conversation, in fact you did not put in any bids on behalf of United Artists Theatre for Paramount pictures, isn't that correct?

A. The record would show if I did or I didn't.

The Court: Well, do you remember?

The Witness: No, sir, I do not remember.

Q. (By Mr. Corinblit: Now, what was said with respect to Warners or Universal or United Artists or Columbia or RKO at this meeting with Mr. Di Cicco?

A. Well, with respect to Warner Bros. and RKO, at that time they were licensing their pictures to the La Tijera and Imperial Theatres, generally licensing them.

Q. That arrangement was arrived at some time shortly [727] before this meeting in a conversation between you and the operator of the La Tijera Theatre, isn't that correct?

A. We discussed it, yes.

(Testimony of Bert Pirosh.)

Q. About when did you have that conversation?

A. I think that was probably in May or June of 1950—1949.

Q. At that conversation with Mr. Kupper of the La Tijera Theatre——

Mr. Johnston: Counsel, you haven't previously identified Mr. Kupper. I think you ought to lay some foundation.

Mr. Corinblit: Yes.

Q. Mr. Kupper was who in 1949, Mr. Pirosh?

A. There was a William J. Kupper, Jr., who was operating the La Tijera and Imperial Theatres in Inglewood.

Q. At that meeting with Mr. Kupper, he told you, did he not, that he wanted to have Warner and RKO product for the La Tijera Theatre and asked you not to bid for them, isn't that correct?

A. Mr. Kupper told me that he had been operating his La Tijera Theatre for about six months at that time—he had been operating the Imperial Theatre for a shorter period, that opened up some time in 1949, also—and he told me he was doing very badly in both theatres on a competitive bidding basis, and said that he was very anxious to eliminate the competitive bidding, if possible, in the Inglewood area. [728]

He told me that he would like to run the pictures of Warner Bros. and RKO in his two theatres, that he had spoken to both Warners and RKO as to the possibility of his running, exhibiting their pictures on a day and date basis between his two

(Testimony of Bert Pirosh.)

theatres. Up to then they had been licensing one run in Inglewood on the 7 day availability.

He told me that they were both agreeable to his doing this, and wanted to know if I would refrain from bidding on their pictures until he had a chance to try to negotiate for the pictures.

He said he was losing more money than he could afford in the theatres, and that he thought this would help him. He said if he had these pictures, he did not think he would need many of the pictures or any of the pictures released by the other distributors.

I told Mr. Kupper that if the distributors were agreeable, I had no objection, that we could try the thing out and see how it worked.

Q. You told him you were agreeable to that arrangement, right?

A. I told him I was willing to try it out and see what happened. That was what happened right then.

Q. This discussion was before the one you had with Mr. Di Cicco, wasn't it? A. That's right.

Q. And, of course, you told Mr. Di Cicco what your conversation was with Mr. Kupper, did you not? A. Yes, sir.

Q. And you know that after Fox and United Artists terminated, for a period of time Mr. Di Cicco did not submit bids against the La Tijera for Warner and RKO pictures, that is correct, isn't it?

A. I don't know what Mr. Di Cicco did. It was only a couple of months after Mr. Di Cicco started

(Testimony of Bert Pirosh.)

operating the theatres that Mr. Kupper came back to me and said he was not happy and he was going to go back to bidding, and everything went back to bidding again.

Q. Before that happened, Mr. Pirosh, just before that happened, you told Mr. Di Cicco of the conversations with Mr. Kupper and, of course, it was the understanding Mr. Di Cicco would not bid for Warner and RKO pictures, is that correct?

A. I made no understandings on behalf of Mr. Di Cicco.

Q. You did tell him what discussion you had had with Mr. Kupper? A. Yes, sir.

The Court: May I ask this witness a question? During this particular period of time was there enough of the Fox pictures to satisfy the demand of all the Fox theatres in the Inglewood area? You had a number of Fox theatres down there. [730]

The Witness: Yes, we had several. We were playing, in addition to the Twentieth Century-Fox pictures, the pictures released by Paramount, United Artists, I think Columbia, Universal, and we were not operating all of our theatres on the 7 day availability. Normally, our Fox Theatre in Inglewood, normally, played on the 14 day availability. We found it very profitable to do so.

The Court: And then you didn't have to have these pictures you were talking about, MGM pictures? You had plenty of pictures without the MGM pictures.

(Testimony of Bert Pirosh.)

The Witness: That's right, and our profits were very substantial without the MGM pictures.

Q. (By Mr. Corinblit): You did have to have Paramount pictures, though, didn't you?

A. We had to have some pictures.

Q. And you did get Paramount pictures during that time, didn't you?

A. I think we got most of the Paramount pictures.

Q. You know that the La Tijera did not bid on Paramount pictures, don't you?

A. This was a period from about somewhere in June or July, I think, of 1949, up until about the first of April of 1950.

Q. You know they did not bid against you for Paramount pictures during that time, right? [731]

A. I don't think they were.

Q. And the same thing is true, United Artists did not bid against you for the Paramount pictures during the period of time after it left Fox West Coast?

A. During that two or three months period I don't think they bid on the Paramount pictures, no, sir.

Q. Let's talk a minute about Universal pictures.

A. Yes, sir.

Q. What was the arrangement as far as Universal Pictures was concerned?

A. I don't think there was any arrangement whatsoever concerning Universal. I think we were

(Testimony of Bert Pirosh.)

negotiating with Universal and buying most of their pictures.

Mr. Corinblit: I would like to offer in evidence, and I will substitute a photostatic copy for this copy, the cut-off card for the La Tijera Theatre for the 683 group, indicating it was mostly in 1949.

The Court: What is the exhibit number?

Mr. Corinblit: As plaintiff's exhibit next in order, 51.

The Court: In evidence.

The Clerk: Exhibit 51.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 51.)

Mr. Corinblit: I will supply a photostat. [732]

Q. Mr. Pirosh, I want to read to you from the exhibit just introduced, which is the Universal cut-off card, in the column under Additional Terms, bidding situation, Inglewood first run, and a line through it, and then it says "split with Fox."

Doesn't that refresh your recollection, Mr. Pirosh, that Universal product was discussed in the meeting with Mr. Kupper, and that for the La Tijera Theatre you agreed as to Universal to split and he agreed to split with you?

A. I don't know what split with Fox means with reference to Universal. [733]

Mr. Johnston: Will you show him the document? I don't think he has ever seen the document that you hold in your hand. I don't think I have seen it either. Maybe I had better take a look at it.

(Testimony of Bert Pirosh.)

Mr. Corinblit: The only document that has been offered is Plaintiff's Exhibit 51.

The Witness: This one?

Mr. Corinblit: Yes.

Mr. Johnston: Excuse me. May I look at that too?

Mr. Corinblit: Certainly, go ahead.

Q. Now, Mr. Pirosh, my question is——

Mr. Johnston: May I look at what is underneath this?

Mr. Corinblit: Sure. They are the other cutoff cards.

Mr. Johnston: Covering what period?

Mr. Corinblit: I don't know, counsel. I am sure we will get to that later.

Mr. Johnston: I hope you will at this time.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, doesn't an examination of Plaintiff's Exhibit 51 refresh your recollection at all about the discussion with regard to Universal pictures with Mr. Kupper in 1949? A. Well, I don't recall any——

The Court: You can answer that yes or no. Does it refresh your recollection? If you say "No," that ends it.

The Witness: No, it doesn't. [734]

Q. (By Mr. Corinblit): Well, in fact, Mr. Pirosh—it is a fact that you and Mr. Kupper stated to each other you would split Universal pictures, and you allocated them one by one as they came out, isn't that correct?

A. I have no recollection of any conversation

(Testimony of Bert Pirosh.)

with Mr. Kupper with relation to Universal product.

It does seem from that exhibit that either Mr. Kupper or myself told Universal that we would like to discontinue bidding for their pictures, and apparently Universal was agreeable, and discontinued to bid, and licensed their pictures as they came out.

The Court: How did they license them? Did they give one to Fox and one to some other theatre, or was it by lot, or how did they license them?

The Witness: I would think, your Honor, they would license the pictures where they could sell them to the best advantage.

If Mr. Kupper needed a picture in his theatre as a top picture to play on percentage and I couldn't give them that kind of booking, I would say they would sell Mr. Kupper, and if I could give them a better play on their pictures, I would say they would sell to me.

It is true that Mr. Kupper and I may have had some conversations as to which theatre was going to talk to Universal about a particular picture. We tried to find room for [735] all the pictures, and I think we played them all. Universal apparently was satisfied with the arrangement.

The Court: Did you have any agreement as to what the bid was going to be and what you would bid and what the other theatre would bid?

The Witness: I had no agreement whatsoever with Mr. Kupper as to what he would offer for a picture.

(Testimony of Bert Pirosh.)

If I wanted to play it in my theatre, I would meet with the Universal people and negotiate for the picture as I would with any other.

The Court: How did Mr. Kupper know not to bid more than you if you were to get the picture?

The Witness: Universal, according to this exhibit, apparently discontinued bidding and negotiated for their pictures instead of licensing them on a formal competitive bidding basis during this period, is what it looks like to me from that exhibit.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, what about Columbia pictures? What discussion did you have with Mr. Kupper about Columbia pictures?

A. I don't remember any discussion with reference to Columbia.

Q. You don't recall any? A. No, sir.

Q. Now, how about United Artists pictures? What [736] discussion did you have with him about those pictures?

A. I don't recall that. The only discussion I recall with Mr. Kupper was with reference to Warner and RKO pictures. They wanted to play in his theatres. We may have discussed other things, but I just can't remember what else we did discuss.

Q. Now, I take it, whatever you discussed with Mr. Kupper at that prior meeting, you also discussed with Mr. Di Cicco of United Artists Theatre Circuit at the meeting in the fall of '49—that is, you mentioned to him everything that you had talked about with Mr. Kupper?

(Testimony of Bert Pirosh.)

A. I would think it quite likely that I did. [737]

* * * * *

Q. (By Mr. Corinblit): I want to put some names on this board so we can try to keep these matters straight as to your discussions.

I think you mentioned you had a discussion with Mr. Kupper, is that right? A. Yes. [742]

Q. And you also had a discussion or a series of discussions with Mr. DiCicco? A. That's right.

Q. Now, I want to ask you about one more person. You know Mr. Leo Miller? A. Yes, I do.

Q. And Mr. Miller was the chief buyer for the Warners Theatres in Southern California in 1949, '50 and '51, is that right? A. Yes, he was.

Q. Now, in addition to that—we will get to the names of those whom you had conversations with, the companies, pertaining to these matters.

First, with respect to Loew's. You had a conversation with Mr. Hickey having to do with your conversation with Mr. Di Cicco, did you not?

A. Yes, sir.

Q. I will put these names on the board as we come to them relating to your conversations and we will add them as they are brought out. Now, I want to begin first with a few more of the details of your conversations with Mr. Kupper.

Now, Mr. Kupper at that time, at the time of your conversations, I think you said they were in the summer of 1949? Mr. Kupper was operating the La Tijera Theatre located [743] at this point on the map, and the Imperial Theatre located at approxi-

(Testimony of Bert Pirosh.)

mately this point. Do you know the approximate distance between the La Tijera and the Imperial?

The Court: As I understood the parties were going to stipulate as to distances.

Mr. Westbrook: You have a paper which gives you the mileage between these theatres, counsel. It is on the list that I gave you.

Mr. Corinblit: I don't think that we can check that particular item from the list.

Mr. Westbrook: I am quite sure you can.

Mr. Corinblit: Do you have a copy of it?

Mr. Westbrook: I will give it to you in just a minute. [744]

Mr. Corinblit: Well, in the interim, we can——

Mr. Westbrook: It would be approximately five miles.

Mr. Corinblit: We will stipulate that fact, your Honor, that the distance between the two theatres is approximately five miles.

Q. (By Mr. Corinblit): Mr. Pirosh, Mr. Kupper told you in your conversation with him in the spring of 1949 that he wanted to play the La Tijera and the Imperial Theatres day and date with each other on the 7 day availability, did he not?

A. Yes, he did.

Q. And the product that he said he would like to play in those two theatres on the 7 day availability day and date was Warner's and RKO product, isn't that correct? A. Yes, sir.

Q. And subsequently to your conversation, Warners, at least for a period of time, and RKO did

(Testimony of Bert Pirosh.)

play day and date in the La Tijera and the Imperial Theatres, isn't that correct?

A. Yes. I think they continued to do that from approximately August of 1949 until about April, 1950, when they resumed competitive negotiation or competitive bidding in the area.

Mr. Corinblit: Incidentally, counsel, with respect to one more of the distances on your list, we have checked, [745] and I wonder if we could stipulate that the Academy Theatre is approximately 4.5 to 4.6—well, what was your distance? 4.4?

Mr. Westbrook: It is either 4.4 or 4.5, depending on whose figure you have. I have never seen any 4.6 figure.

Mr. Corinblit: All right, we will do that, 4.4 to 4.5 miles. The Academy is approximately four and a half miles from the Paradise Theatre, and the La Tijera is approximately a half mile further, five miles, from the Imperial Theatre.

Q. Now, when Warners and RKO licensed their product simultaneously day and date in the La Tijera and Imperial Theatres during this early period, you did not submit bids in competition with the La Tijera, isn't that correct?

A. That is correct.

Q. Warners, as far as you know, negotiated the playing of 7 day pictures in those theatres day and date, is that correct?

A. I suppose they did.

Q. In your discussion with Mr. Kupper at the time of your meeting, you also discussed with him

(Testimony of Bert Pirosh.)

the matter of a move-over run, that is to say, you discussed with Mr. Kupper an arrangement whereby pictures would be played in the La Tijera and moved over to the Fifth Avenue without any time intervening between the play-off, isn't that correct?

A. Well, I know that we did move over some of the Warner [746] and RKO pictures to the Fifth Avenue, and I would surmise that at that time I did request that privilege.

The Court: The Fifth Avenue was a Fox theatre?

The Witness: Yes, sir, that is a Fox West Coast theatre.

Q. (By Mr. Corinblit): After you discussed that matter of move-over from the La Tijera and/or Imperial to the Fox Fifth Avenue Theatre, I take it you discussed that matter with Warners and RKO, is that correct?

A. I know that we played some of their pictures, so I must have at least negotiated for some pictures, yes. I had to talk with somebody.

Q. As a matter of fact, you had Mr. Kupper write a letter to these defendants, to the defendant Warners, and also to RKO, with respect to that matter, did you not?

A. I wouldn't say that I had Mr. Kupper write a letter, no.

Q. Do you know that a letter was sent?

A. I don't recall any letter being sent.

Q. All right. Now, at the time that you had this

(Testimony of Bert Pirosh.)

discussion with Mr. Kupper, you also discussed with him the policy of playing a move-over from the Academy to the Fox Theatre, did you not?

A. I don't think there would have been any necessity for my discussing with Mr. Kupper what policy I might want to have in the Fox theatre. He had no interest in the Fox theatre. [747]

Q. Do you remember whether you had such a discussion or not? A. I do not.

The Court: May I ask the witness a question?

Mr. Corinblit: Certainly, your Honor.

The Court: I understood that this move-over was a move-over from an independent theatre to a Fox theatre.

The Witness: Actually what was occurring, your Honor, was that Mr. Kupper was playing pictures on the 7-day availability in Inglewood and we frequently licensed those pictures for the 14-day availability in the Fifth Avenue Theatre after he completed showing.

Mr. Mitchell: I can't hardly hear you, Mr. Pirosh, and I don't believe the jury can.

The Court: You are trying to convince the jury—you are not trying to convince me.

Mr. Mitchell: Could that answer be read?

The Court: Yes, read the answer, Mr. Reporter.

(Answer read.)

The Court: There was no move over, was there?

The Witness: In fact, if he played the picture on the 7-day availability and we played it—he played

(Testimony of Bert Pirosh.)

it for 7 days, and we played it on the 14-day availability, it could be construed as a move-over run.

The Court: Was your deal made with the independent or [748] with the distributor?

The Witness: I made my deals with the distributor.

The Court: You didn't make them with the independent theatre—you didn't agree with the independent to move this picture over to the Fox theatre?

The Witness: No, sir.

The Court: You made your deal with the distributor.

The Witness: I think that I asked Mr. Kupper if he would have any objection to reducing the clearance that he was asking or that he might have been granted by the distributors, to permit me to play the pictures on the 14-day availability.

The Court: Now, you have the 7-day availability and the 14-day availability. That availability was from where—downtown Los Angeles?

The Witness: Yes, sir.

The Court: Well, if you had a 14-day availability from downtown Los Angeles it didn't make any difference, did it, as to whether the independent was still playing the picture? There was no clearance, was there? You had the 14-day availability.

The Witness: Actually that is correct.

Q. (By Mr. Corinblit): But, Mr. Pirosh, before you discussed that matter with Mr. Kupper, there had been some clearance, isn't that right?

(Testimony of Bert Pirosh.)

A. I do not remember.

Q. But you remember discussing the matter of the move-over with Mr. Kupper. I think you have so testified. That is correct, is that right?

A. I imagine I did mention it to him, yes.

Q. All right. And after you discussed it with him, then you went to the distributors and they agreed, isn't that right?

Mr. Mitchell: "The distributors." Now, your Honor, let us have a foundation as to who we are talking about.

Mr. Corinblit: All right. Whatever distributors you went to, Mr. Pirosh. You can name them.

The Court: We were talking about Warner Bros. pictures.

Mr. Corinblit: Yes.

The Court: Did you talk to Warner's distributor?

The Witness: I don't know. Warners had been serving or licensing pictures in Inglewood for some time on both a 7-day and 14-day availability and I do not know if I talked to them at that particular period concerning it.

Q. (By Mr. Corinblit): You did talk to RKO though?

A. I do not recall any such conversation.

Q. You know that Mr. Kupper sent a letter to RKO, don't you?

A. I don't know that he sent a letter.

Q. All right. Now, I think you testified that Mr. [749a] Kupper at the time of this meeting,

(Testimony of Bert Pirosh.)

after all these matters were discussed, he wanted Warner and RKO, and with respect to this move-over matter, he said to you that if he had Warners and RKO he would not interpose any competitive bids with respect to Paramount, is that right?

A. I would think that he made some such statement.

Q. And he also made that same statement with respect to Loew's? A. I would think so.

Q. Now, on Universal, you also agreed with him that you would at that time——

The Court: Wait a minute. Universal is not a "him." You said you agreed with him. Who do you mean, counsel?

Mr. Corinblit: With respect to Universal you agreed with Mr. Kupper that the pictures would be divided as they came off, isn't that correct, in some fair and equitable way between you?

The Witness: I would not say that I agreed with Mr. Kupper as to how the Universal pictures would be played.

I think I explained yesterday that we negotiated with Universal for such of their pictures as we wished to play in our theatres and Mr. Kupper negotiated with Universal for such of their pictures as he wanted to play in his theatres. [750]

Q. But you also testified yesterday that you discussed with Mr. Kupper which one of you would proceed to negotiate for a picture, isn't that right?

A. At times we did.

Q. With respect to United Artists product, in

(Testimony of Bert Pirosh.)

your discussion with Mr. Kupper, you stated you intended to continue to play United Artists pictures, isn't that correct?

A. I don't remember what I stated with regard to United Artists pictures.

Q. Mr. Pirosh, I want to show you the transcript of your deposition taken in this case, page 40, at line 15, and ask you to read the question at line 15 and your answer at line 18.

A. You said, "Did Mr. Kupper state"——

The Court: Read it to yourself.

The Witness: I'm sorry. All right. I have read.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, do you now recall that Mr. Kupper stated that he would not go after United Artists product and that Warners and RKO would be sufficient for him?

A. I recall, and I have testified I said that I thought overall Mr. Kupper stated that Warners and RKO should suffice him in his theatres. I still have no recollection of any discussion concerning United Artists.

Q. Any words that mentioned the company United Artists? [751]

A. I do not remember any conversation with respect to United Artists pictures, and in this deposition I did not say that I remembered any such discussion.

Q. I will agree with you that your statement in this deposition is not clear, but I would like to ask you about the statement.

(Testimony of Bert Pirosh.)

In the deposition I asked you this——

Mr. Johnston: What are you reading now?

Mr. Corinblit: The same question, line 15, and the answer at line 18.

Mr. Johnston: What page?

Mr. Corinblit: Page 40, same page.

Mr. Johnston: Thank you.

Q. (By Mr. Corinblit): "Did Mr. Kupper state that he would not go after United Artists product or he stated, I take it, that Warners and RKO would be sufficient for him, is that correct?"

And your answer, "Roughly, that is correct."

Your answer would be the same to the question, is that correct?

A. Well, actually, now that I have seen this in print, you asked me two questions.

Q. You are right.

A. And I answered the second question.

Q. That is, you were answering the question that [752] Warners and RKO would be sufficient?

A. That is correct, sir.

Q. When you had this conversation, after you had your conversations with Mr. Kupper, some time after that you discussed the matter of your understanding with him with someone at Warners and someone at RKO, is that correct?

A. That is correct.

Q. And do you remember the name of the person you talked to at Warners?

A. At Warners I must have talked to Henry Herbel.

(Testimony of Bert Pirosh.)

Q. Mr. Herbel is now deceased, is he not?

A. That is correct.

Q. Mr. Herbel at that time was the district manager of Warners, that is, he was in charge of selling Warner pictures in the Los Angeles exchange area, is that correct, and perhaps other districts as well?

A. Yes. He was the top Warners sales executive in Los Angeles.

Q. And you also discussed this matter of your discussion with Mr. Kupper with representatives of RKO, isn't that correct?

A. I am sure that I must have.

Q. And the person that you talked to there was whom?

A. I would say it would have been either Herb McIntyre, who was their district manager, or Harry Cohen, who [753] at that time was their branch manager.

Q. And Mr. Cohen is now deceased?

A. That is correct.

Q. What did you tell Mr. Herbel and what did you tell Mr. McIntyre and Mr. Cohen? Perhaps you want to take them one at a time.

A. Well, I have no specific recollection what I told Mr. Herbel. I would surmise that I talked to him concerning my conversation with Mr. Kupper and advised him of Mr. Kupper's wishes so far as Warner Bros. pictures were concerned, and to the best of my recollection Mr. Herbel said that he

(Testimony of Bert Pirosh.)

had no objection to licensing his pictures in the manner discussed.

Q. And you said you had no objection?

A. I said that at that time I had no objection.

Q. To get that clear again, you were telling Mr. Herbel you had no objection to Warner Bros. licensing their pictures on 7 day availability day and date between the La Tijera and the Imperial which, as was stipulated, are about five miles apart.

A. It would not have made any difference to me if the theatres were next door to one another, if they wanted to play pictures day and date and I didn't need the pictures to exhibit in our theatre, I didn't care which theatres played them. [754]

Q. Did you have substantially the same conversation with Mr. McIntyre and Mr. Cohen?

A. I would presume so.

Q. Did you have a conversation with someone at Universal with respect to the matter that you had discussed with Mr. Kupper as it affected Universal product?

A. I can remember no conversation with anyone at Universal.

Q. Did you have a conversation with someone at Columbia with respect to that same matter?

A. I can remember no conversation with anyone at Columbia.

Q. Now, subsequently, that is after the conversation with Mr. Kupper, you had a conversation with Mr. Di Cicco. He at that time was the general

(Testimony of Bert Pirosh.)

manager of United Artists Theatres Circuit, is that correct?

A. I don't know what Mr. Di Cicco's capacity was in 1949. [755-6]

Q. Well, you dealt with him as a representative of U. A. Theatres Circuit, is that right?

A. Yes, sir.

Q. Now, you told Mr. Di Cicco all of the matters that you had discussed with Mr. Kupper, isn't that correct?

Mr. Johnston: When was this?

Mr. Corinblit: This was about August, September or October, 1949. Is that correct?

The Witness: I would say that at that time I told Mr. Di Cicco anything concerning my conversations with Mr. Kupper that might have affected the United Artists Theatre in Inglewood.

Q. (By Mr. Corinblit): Now, I want to turn to the matter of your discussion with Mr. Di Cicco concerning the product of the defendant Loew's Incorporated.

Now, at this discussion with Mr. Di Cicco in the fall of 1949, Di Cicco told you that they were going to operate the United Artists Theatres Circuit and that they did not want to bid unless it was necessary, isn't that correct? A. I believe so.

Q. He also said that they would like to play first run pictures in most of their theatres, isn't that correct?

A. In most of their theatres where?

(Testimony of Bert Pirosh.)

Q. Well, you were—how many theatres were there—I will withdraw that. [757]

At the time do you know how many theatres there were in which you had an interest with U. A. Theatres?

Mr. Johnston: I am going to object to that as being immaterial. The joint or stockholding interest with United Artists Theatres Circuit in other areas has no application to the problem at hand here.

The Court: Well, I think he can answer that easier than we can argue and in less time. The question is, do you know—yes or no.

The Witness: I don't know.

Q. (By Mr. Corinblit): Now, he did say to you, however, that he wanted to play first run pictures in most of their theatres. That is what he told you?

A. Well, I don't know how many theatres they had and I do know that there were some theatres where he did not intend to play first run pictures in Inglewood. For example, he was not interested in playing pictures first run. He was interested in playing pictures on the 7-day availability which is the subsequent run availability.

Q. That is first run in Inglewood, though, isn't it? A. It can be.

Q. Mr. Pirosh, do you remember that you gave your deposition in another case entitled "Goldwyn versus Fox West Coast Theatres?" A. Yes.

Q. And you gave your deposition as you do in each deposition under oath, is that right?

(Testimony of Bert Pirosh.)

A. Yes, sir.

Q. I want to show you page 159 of the transcript of your deposition taken in that case, and I want you to examine the line beginning with line 25 on page 158 and running over through lines 1 to 11 on page 159. I will ask you to look at that, please.

A. What line?

Q. The last question on the page.

Mr. Johnston: Just a minute, Mr. Corinblit, please.

Mr. Corinblit: Yes.

Mr. Johnston: Where is the terminal point at which you wish to have Mr. Pirosh stop?

Mr. Corinblit: At line 12.

Mr. Johnston: On page 159?

Mr. Corinblit: Yes.

Mr. Johnston: Now, your Honor, I would ask the court to read the portion indicated by Mr. Corinblit.

I submit it has no bearing upon the issues involved in this action and it relates by way of hearsay a conversation with another party.

I submit it has no materiality. If the court will indulge me by reading it.

The Court: The witness was asked to read the questions [759] and answers.

Mr. Johnston: Perhaps my statement is premature. I will wait for the question.

The Court: All right.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, does a reading of page 158, the question at the bottom

(Testimony of Bert Pirosh.)

of the page and page 159, from lines 1 to 12—lines 1 to 11 refresh your recollection that Mr. Di Cicco said to you at this meeting in August, September or October, that they would like——

Mr. Johnston: Now, just a minute.

Mr. Corinblit: That they would like to play first run pictures in most of their theatres.

Mr. Johnston: Now that you have read it, why, I will withdraw my objection. You might have done me the courtesy of phrasing your question so you don't read the deposition, so, go ahead.

Mr. Corinblit: Now, counsel, I asked that question precisely the same way I did before without regard to the deposition.

I didn't want to ask the witness any question that he has not already testified to.

Q. Mr. Pirosh, does that refresh your recollection that Mr. Di Cicco said that to you?

A. Yes, it does.

Q. And did he say that to you? [760]

A. Yes, sir.

Q. Now, Mr. Pirosh, Mr. Di Cicco also told you that he had had a conversation with Mr. Hickey of Loew's, Incorporated, isn't that correct?

A. That is correct.

Q. And he had discussed with Mr. Hickey the possibility of their licensing the coming Metro productions in their theatres where there was no bidding, isn't that correct?

A. That he had discussed that with Mr. Hickey?

Q. Yes. A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. He told you that? A. Yes, sir.

Q. And he also told you that Mr. Hickey had signified that he had no objection, isn't that correct?

A. Yes. I think he told me that Mr. Hickey had said so long as he received the proper film rental that he would be very happy to sell those pictures if they developed the right film rental.

Q. Now, in response to that statement at that time or at a subsequent time, you told Mr. Hickey it was perfectly all right with you, isn't that correct? A. Well, I don't think that—

The Court: I think the witness has testified two or three times that it was perfectly all right with him; he [761] didn't care as long as he had enough pictures for his own theatres. He didn't care what the others did. He has already testified to that several times.

Mr. Corinblit: That is correct, but I think it is important. He stated to Mr. Hickey that he was agreeable as far as Fox West Coast was concerned. He stated that to Mr. Di Cicco and I think he can answer that question.

The Witness: If you are referring to the Inglewood-Westchester competitive area, I think I have already testified that Loew's were licensing their pictures on a competitive bidding basis at that time, and that Mr. Di Cicco asked me to attempt to license the pictures for the United Artists Theatre during the balance of the period that we operated the theatre.

(Testimony of Bert Pirosh.)

And he made the further request commencing with the time when they started to operate the theatre that he would like me to refrain from bidding on the pictures released by Loew's, and that within a period of only two or three months after he resumed operating the theatre everyone in the Inglewood area, the La Tijera and the Imperial and United Artists and our theatres were all actively bidding for the Loew's product. [762]

Q. Now, Mr. Pirosh, that is not the question I am asking you. I am asking you something very simple, whether or not in response to Mr. Di Cicco's statement that he wanted to bid first-run in their theatres, the United Artists theatres, on Loew's product, and he had talked to Hickey and Hickey said that was agreeable, whether you said to Mr. Di Cicco you agreed, that you were agreeable, and you were then speaking on behalf of Fox West Coast.

A. No, that is not true. I testified Mr. Di Cicco said he had talked to Mr. Hickey concerning non-bidding situations, and Inglewood was a bidding situation, and Mr. Hickey certainly would not make any agreement with that, with any exhibitor in a bidding situation, that he would license his pictures to that theatre. He determined who played the pictures by who sent in the best bid.

Q. Now, Mr. Pirosh, I want to show you your deposition in this case and call your attention to page 29, line 20, through the end of the page, and line 1 through line 10 on page 30. A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. All right, sir. Now, were you asked this question and did you give this answer:

“Did he tell you that Hickey said”——

Mr. Johnston: Is this supposed to be impeachment?

Mr. Corinblit: Yes, sir. [763]

Mr. Johnston: I submit it is not impeachment. It is just what the man has testified to a minute ago.

The Court: Overruled. I think that is a question for the jury.

Q. (By Mr. Corinblit): “Did he tell you Hickey said he would like to play Loew’s product in the United Artists Theatre Circuit?”

“A. As I recall Mr. Di Cicco’s statement to me, he told me he had talked to George Hickey and had told Mr. Hickey he wanted to play the pictures released by Loew’s Inc., in the United Artists theatres wherever there was no bidding, and Mr. Hickey said to him something to the effect, as long as he got the proper film rentals, he certainly had no objection.

“Q. What did you say to that statement?

“A. I don’t know if I answered immediately, but eventually I believe I said it was perfectly all right with me.

“Q. Now, I take it when you said it was perfectly all right with you, you were speaking on behalf of Fox West Coast, were you?

“A. Yes.”

(Testimony of Bert Pirosh.)

Now, were you asked those questions and did you give those answers?

Mr. Johnston: I will stipulate he did.

The Witness: May I read the question immediately before this stuff? [764]

Q. (By Mr. Corinblit): Yes, sir. Before you do that, were you asked those questions and did you give those answers?

Mr. Johnston: I will stipulate he was asked every question in the deposition and gave the answers.

The Court: I know, but the witness can answer that.

Q. (By Mr. Corinblit): Were you asked those questions and did you give those answers?

A. Yes, sir.

Q. Were they true when you gave those answers?

A. Yes, sir.

Q. What question do you want to refer to?

A. The question immediately before all this was:

“And did he tell you:—

Referring to Di Cicco, I guess.

“—that he had discussed with Hickey the possibility of their licensing the coming Metro product in their theatres where there was no bidding?”

All of this conversation subsequent to that question was talking about situations where there was no bidding.

Q. All right. Now, at that time, Mr. Pirosh, United Artists Theatres Circuit, Inc., and Fox, in

(Testimony of Bert Pirosh.)

the fall of 1949, in August or September, perhaps the early part of November, 1949, had an interest in the Egyptian Theatre on Hollywood Boulevard, did they not? [765]

A. If we still retained an interest in the theatre at that time, I don't remember.

Q. The Egyptian on Hollywood Boulevard was playing Loew's first run pictures, was it not, in the fall of 1949, is that correct? A. I think it was.

Q. And there was in August, 1949 no bidding for Loew's pictures as far as the Egyptian was concerned, isn't that correct?

A. That is correct, sir.

Q. I am sorry. I may have forgotten whether I asked this. Did you state you didn't know how many theatres were in the pool between Fox and United Artists as of that date? You don't recall the number? A. I don't recall.

Mr. Mitchell: Just a minute. Pool?

Mr. Johnston: That is assuming a fact not in evidence, that there was a pool, and I object to the question on that ground.

The Court: Sustained.

Q. (By Mr. Corinblit): That were covered by the basic agreement and operated by United West Coast Theatre Circuit Corporation.

Mr. Johnston: I am going to ask you to restate the question. The court has sustained the objection.

The Court: Restate the question. He has answered the question.

(Testimony of Bert Pirosh.)

Mr. Corinblit: I will withdraw the question, your Honor.

The Court: He has already said he didn't know.

Q. (By Mr. Corinblit): Now, after your conversation, the conversation with Mr. Di Cicco that you have just referred to, you had a—no.

Speaking first with respect to Loew's, after the conversation with Mr. Di Cicco, you had a discussion with Mr. Hickey to verify Mr. Di Cicco's statement to you, isn't that correct?

A. That is correct.

Q. Where was that conversation?

A. In Mr. Hickey's office.

Q. And what did you say and what did he say?

A. I asked him if Mr. Di Cicco had spoken to him. I wanted to see if Mr. Di Cicco had told me what had transpired in his conversation or conversations with Mr. Hickey.

Q. And Mr. Hickey said to you that he had had such a conversation, that Loew's was agreeable, was that correct?

A. Mr. Hickey is always agreeable to selling his pictures to any theatre that will pay him the money he wants. He is strictly commercial.

Q. In that meeting with him, he said he was agreeable, [767] he said he had told Mr. Di Cicco, and he told you he was agreeable to the proposal of Mr. Di Cicco, is that correct?

A. As long as he received the proper film rental.

Q. Yes, I understand that, but so long as he re-

(Testimony of Bert Pirosh.)

ceived his proper film rental, he said he was agreeable, is that correct?

A. If he got the right money, that's right.

Q. And you said you were agreeable to that?

A. I said—look, if Mr. Hickey decides to sell somebody his pictures, it doesn't matter much if the other man is agreeable or not agreeable. Mr. Hickey does what he wants. I said that I don't know if I said I was agreeable. I had no objection to Mr. Hickey and Mr. Di Cicco working out details on Mr. Hickey's pictures.

Q. Now, in that same conversation with Mr. Di Cicco, you and he discussed the fact that either you or he or both of you would contact the distributors to see if they were agreeable to the matters you and he had discussed, isn't that correct?

A. I don't know how to answer that question unless we discuss each individual distributor.

Q. Well, at this same meeting with Mr. Di Cicco, he told you that with respect to those situations in which Fox and United Artists did have theatres in competition with each other, that he would like to play certain distributors in [768] those theatres, isn't that correct?

A. In some of the situations, yes, sir.

Q. And he specified each town and each theatre and what he wanted, isn't that right?

A. Yes.

Q. And you told him at that meeting what distributors' product you would like to have in each of those situations, isn't that right?

(Testimony of Bert Pirosh.)

A. If Mr. Di Cicco told me that he wanted, say, Loew's Inc. product in a theatre, and that was all he wanted, there would certainly be no necessity for me to tell him what I wanted.

Q. You would have the rest?

A. I would have what was left.

Q. Or if Mr. Di Cicco decided he wanted two or three companies, you would say you would take the rest, right? A. If we agreed.

Q. And with respect to that discussion between you, you then stated that you would contact the various distributors involved to obtain their consent to this arrangement, is that right?

A. Not necessarily, Mr. Corinblit, with reference to each situation. For example, if in Pomona I were to continue playing the product released by Paramount or United Artists or any company which I had heretofore been playing in our Fox [769] Theatre, I would have no occasion to talk to Paramount or to United Artists, because we were playing their pictures in the Fox Theatre and we expected to continue to play their pictures in the Fox Theatre.

Q. But if in another situation there was a change then you would discuss that with Mr. Di Cicco and discuss it with the distributors, is that right?

Mr. Johnston: I am going to object to roaming all over California and elsewhere in this lawsuit.

We have heard little enough about Inglewood and Westchester and now Mr. Corinblit is asking this witness about conversations relating to areas that

(Testimony of Bert Pirosh.)

have nothing to do with Inglewood and Westchester and I object on the ground that such questions are totally immaterial.

Mr. Corinblit: This is a discussion having to do with a general arrangement between these people. In other words, it is an over-all matter.

I am not going into detail. As a matter of fact, I don't have more than two or three more questions on this point.

The Court: The objection is overruled. Ask the two or three questions and we will leave the subject.

Mr. Corinblit: Will you read the question?

(Question read as follows: "Q. But if in another situation there was a change then you would discuss that with Mr. Di Cicco and discuss it with the distributors, is that right?")

The Witness: Well, with respect to Inglewood, of course, there was no necessity to talk to any of the distributors at [771] this time.

With respect to some of the situations I am positive that I did discuss the forthcoming change in the operation of the theatres with them, and possibly discussed with them that I would like to continue to license their pictures or that United Artists might try to license their pictures if the distributors were agreeable.

Q. (By Mr. Corinblit): And the various distributors signified their willingness to offer the pictures either to you or to United Artists?

Mr. Mitchell: Now, wait a minute, your Honor. If we are going into conversations, the "various

(Testimony of Bert Pirosh.)

distributors'' don't talk. If we are going to talk about what this person said and what another said—I mean, you can't properly generalize that way and I object on the ground no foundation is laid for any conversation with these distributors—who was present, who did he talk to?

How can we meet such a thing?

The Court: Objection sustained.

Q. (By Mr. Corinblit): Now, there is one more individual with whom you had a conversation that I want to go into, Mr. Pirosh, and that is Mr. Leo Miller.

Now, at the time that you, in 1949, '50 and '51 Warners, the defendant in this case, had an interest in the Warner Theatre downtown, correct? [772]

A. Yes, sir.

Q. And the Warners in Hollywood?

A. I think they did.

Q. And the Wiltern Theatre on Wilshire and Western?

A. Well, Warner Bros. theatres—Warner Bros. was operating those theatres. Now, whether they were owned by the defendant Warner in this case, I don't know.

Mr. Corinblit: Well, you will stipulate to that, won't you, counsel, that at that time they owned the Warner-Wiltern?

Mr. Mitchell: They operated it, one of the Warner companies operated those three theatres.

Mr. Corinblit: All right.

Q. Now, in addition to that, Warners had a the-

(Testimony of Bert Pirosh.)

atre in competition with Fox in Huntington Park, correct? A. Yes, sir.

Q. And in San Pedro? A. Yes, sir.

Mr. Mitchell: I object to this as being immaterial. We don't have to go outside of—I mean in to Huntington Park and try the entire area.

The Court: We have discussed San Pedro and Huntington Park. The objection is overruled.

Q. (By Mr. Corinblit): In San Pedro, correct?

A. Yes, Warners had a theatre there.

Q. And in Beverly Hills, right? [773]

A. Yes.

Q. Now, you had some discussions with Mr. Miller, who was a buyer for those Warner theatres at that time, did you not—that is in '49, '50 and '51?

A. What sort of discussion?

Q. Discussion about product with him?

A. I don't think I did.

Q. Well, in all of these situations, Mr. Pirosh, as of this time—well, eliminating for a moment the first run Los Angeles matter, you were customarily playing the product of certain distributors and Warners theatres were customarily playing the product of other distributors, is that correct?

A. That's correct, sir.

Q. And this arrangement continued, is that correct? A. Well,—

Mr. Johnston: Until when?

Q. (By Mr. Corinblit): Through 1949, '50 and '51?

(Testimony of Bert Pirosh.)

A. I would have to check some records to see how long it continued in some of the situations.

In San Pedro, for example, I am sure that in 1949 we were being offered the pictures released by Metro and Paramount, United Artists, Twentieth Century-Fox and most of the RKO pictures, and we were buying the pictures that were being offered us or, licensing them, and playing them. [774]

Q. And you were not going after the product being played in the Warner Theatre there, were you?

A. Well, I had all the pictures I needed.

Q. So you didn't go after them, is that correct?

A. That is right.

Q. And none of the distributors ever told you—the distributors whose product you were playing, that Warner theatres were trying to get the product that you had, is that correct?

A. Well, Warners commenced bidding against us at some time—I think it was in 1950 or '51. I could be mistaken. It may have been in '52. They started bidding against us in some of these towns and in Huntington Park, I think it was during this period, the Park Theatre commenced competitive bidding and we were bidding on product there.

Each individual town was a different setup. There was a drive-in in San Pedro which commenced bidding after Warners started the bidding.

Now, what year that was, Mr. Corinblit, I can't recall offhand. [775]

* * * * *

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): Mr. Pirosh, referring again to San Pedro, you testified that you were playing the product of certain distributors.

Mr. Mitchell: I object to that as being immaterial, whether he testified to that or not.

The Court: Overruled.

Q. (By Mr. Corinblit): I want to know if you can give me the answer to this question. Prior to the time that the San Pedro Drive-In came in, it is true, is it not, that no distributor whom you were playing in your theatre told you that the Warner theatres had asked to play that product?

Mr. Mitchell: Same objection.

The Court: Same ruling.

The Witness: I think I said some time between 1949 or 1950 or 1951 or 1952, somewhere in that period, Warner Bros. commenced bidding against us in San Pedro, and I am not sure whether it was before the drive-in was bidding for first run or after the drive-in was bidding for first run.

Q. (By Mr. Corinblit): All right. Before that time it is true no distributor told you Warners was trying to get the [779] product that your company was playing, is that correct?

A. You mean 1946, 1947, 1948, and so on?

Q. Before Warners started bidding.

A. I can't recall any such statement.

Q. Similarly, I just want to ask you about three situations, Mr. Pirosh, similarly in Beverly Hills, where Warners had a theatre and Fox had a theatre, you customarily licensed the product of certain

(Testimony of Bert Pirosh.)

distributors and they customarily licensed the product of other distributors, is that right?

Mr. Mitchell: Wait a minute. Let's get times for this, because if it is material at all, a time period is material.

Q. (By Mr. Corinblit): 1949, 1950 and 1951.

A. Well, I have to make the same answer, Mr. Corinblit. I do not remember if Warners were bidding against us in Beverly Hills in 1949, 1950 or 1951. They may have been or they may not have been.

Q. Prior to bidding, you customarily played the product of certain distributors in your theatre and Warners customarily played the product of other distributors in their theatre in Beverly Hills, is that correct? A. That's right.

Q. Prior to that time, you didn't negotiate or attempt to negotiate with the distributors that the Warner theatres were playing, isn't that correct?

A. Well, we had enough pictures to supply our theatre and saw no necessity for trying to get more pictures.

Q. So you didn't do it, right?

A. That's right.

Q. And similarly no distributor whose product you were playing told you that the Warner Theatre was trying to negotiate for the pictures that you regularly played, isn't that correct?

A. I don't remember if any distributor told me that or not.

Q. Now, in Huntington Park, which is the third

(Testimony of Bert Pirosh.)

and final situation in this group, again, prior to the time that an independent theatre came into that area, you were customarily licensing the pictures of certain distributors in your theatres and Warner was customarily licensing the product of certain other distributors in their theatres, isn't that correct?

Mr. Mitchell: Let's get the time fixed.

Mr. Corinblit: 1949, 1950 and 1951.

The Witness: I think during 1949, 1950 and 1951, there was competitive bidding in Huntington Park.

Q. (By Mr. Corinblit): We will get to that competitive bidding in just a minute, Mr. Pirosh, but before there was competitive bidding in Huntington Park, the same thing is true, is it not, you customarily licensed the pictures of certain [781] distributors and Warners customarily licensed the pictures of certain other distributors, isn't that correct? A. Yes, sir.

Q. You did not on behalf of your theatres attempt to negotiate for the pictures that were customarily being licensed in the Warners theatres, is that correct?

A. In Huntington Park, as I recall it, before the bidding started, for our California Theatre we had available the pictures released by Twentieth Century-Fox, Metro, Paramount, United Artists, and I believe three-quarters of the RKO product.

Q. 75 per cent of RKO, right?

A. That's three-quarters.

(Testimony of Bert Pirosh.)

Q. Go ahead. How about the Warner theatres?

A. Well, I haven't finished answering the question.

Q. I'm sorry. Go ahead.

A. And we had very fine pictures to play in our theatre and we were very happy to play these pictures, and we had no necessity for trying to secure the pictures released by the other companies.

Q. And you didn't do that, correct?

A. That is correct.

Q. And no distributor whose product you were regularly playing in your theatre in Huntington Park ever told you that the Warner theatres had attempted to negotiate for the pictures [782] that you had, right?

A. I don't remember any distributor telling me that.

Q. As a matter of fact, in the Huntington Park situation you had one distributor's pictures, RKO, divided 75 per cent and 25 per cent, didn't you?

A. That is the way RKO was licensing their pictures in Huntington Park.

Q. And you and Mr. Miller sat down at the beginning of each season or as the pictures came out and agreed what 25 per cent he was to get and what 75 per cent you were to get, and then you would submit that to RKO, correct?

A. We did this upon instructions from RKO, that this is the way they wanted to divide their pictures, and they asked Mr. Miller at the time, or

(Testimony of Bert Pirosh.)

whoever was in charge at Warner Bros., to arrange this division of their pictures with RKO.

Q. As a matter of fact, that 75-25 matter applied to San Pedro, didn't it?

A. Yes. In San Pedro RKO sold us 75 per cent of their pictures.

Q. And how about Beverly Hills?

A. In Beverly Hills RKO sold us 75 per cent of their pictures.

Q. I think you mentioned that there might have been something that you called competitive bidding in the Huntington Park area in 1949, 1950 and 1951. In that area the first time [783] competitive bidding arose was when an independent exhibitor named Mr. McClintock came into the area, correct?

A. Yes. Mr. McClintock had the Park Theatre in Huntington Park. [784]

Mr. Johnston: May I object to this? It was my understanding Mr. Corinblit was going to ask two or three questions, about a half-hour or so ago, concerning these outlying communities.

I submit that he has exceeded that limit by a considerable number, and again I say we are wandering in a field not material to the issues in this case.

The Court: How much longer are you going to be?

Mr. Corinblit: Just a few questions with respect to the Huntington Park matter.

The Court: What is "a few"?

Mr. Corinblit: Well, I am sure five minutes will do it and I am through.

(Testimony of Bert Pirosh.)

The Court: All right, go ahead.

Q. (By Mr. Corinblit): Now, in the Huntington Park area competitive bidding arose only when an independent bidder came into the area, Mr. McClintock.

A. I believe that is true.

Q. After that exhibitor came into the area and competitive bidding started, you and he had a discussion in which you agreed competitive bidding was to end, right?

A. Well, Mr. McClintock did come to see me and told me that he was not making any money in his Park Theatre; that he had quite a sizeable investment in the theatre and that he would like to be able to get pictures without the necessity [785] of bidding competitively for them, that is correct.

Q. And as a result of that, that was accomplished, is that right?

A. I think that for a short while some pictures were licensed in Huntington Park on which, at the request—in the Park Theatre, which, at the request of Mr. McClintock, was accomplished. I didn't make any bids. And that lasted a very short time and then, just the same as in the Inglewood situation, after a few months he started bidding again.

Q. Now, as a matter of fact——

Mr. Corinblit: I will withdraw that.

Q. Mr. Pirosh, referring now back to a discussion we talked about quite some time ago, the discussion with Mr. Di Cicco, after that discussion the United Artists took over the operation of a group of

(Testimony of Bert Pirosh.)

theatres which included the United Artists Theatre in Inglewood, isn't that correct, after your discussion some time after?

A. I think it was early in 1950.

Q. All right. Now, after that time or sometime in that period Mr. Freddie Stein, for United Artists Circuit, Inc., was responsible for doing the buying for United Artists Theatre, isn't that correct?

A. Well, I don't know if he was responsible for it, but he was doing some of the buying and booking, yes.

Q. And his responsibility carried on, or he had something [786] to do with the buying on and after January 1950 and all the way through September 1951 at least, is that correct?

A. Yes, I think that Mr. Stein was with them during that period.

Q. Now, when Mr. Stein was doing the buying, and beginning at this time that you say there was competitive bidding, real competitive bidding, in the Inglewood area, from time to time you had some discussions with Mr. Stein about whether or not you would bid for a particular picture or he would bid for a particular picture, isn't that right?

A. Well, I wouldn't say that I had discussions with Mr. Stein. If Mr. Stein would ask me whether or not I was going to make a bid on a specific picture, I would tell him the same as I would tell any other exhibitor in a competitive bidding situation.

Q. Now, as far as telling or discussing with Mr. Stein what you were going to put into the bid, you

(Testimony of Bert Pirosh.)

discussed that with him from time to time, did you not?

A. You mean I told Mr. Stein what we were going to bid on behalf of our theatres?

Q. Or asked him what he was going to bid?

A. I don't recall asking Mr. Stein what he was going to bid.

Q. You don't recall whether you did or did not?

A. I don't think I did. [787]

Q. Do you recall such conversations?

A. I am practically positive that I did not ask Mr. Stein what he was going to bid on any of his pictures—any pictures.

Q. You did talk to him about the bids?

A. I answered a question before in which you asked me, did I discuss with Mr. Stein—did I have discussions with Mr. Stein, and I think I said that I don't recall any discussions, but that, if Mr. Stein had asked me whether or not I was going to make a bid on a specific picture, I would tell him yes or no, the same as I would tell any exhibitor in a competitive bidding situation if I were asked the question.

Q. All right. Now, Mr. Pirosh, it is a fact, is it not, in the Los Angeles area that at one time or another since August of 1951—

Mr. Corinblit: I will withdraw that.

Q. It is a fact that since August 1951 Paramount has licensed its pictures on a multiple day and date policy in the Los Angeles area?

A. What do you call.

(Testimony of Bert Pirosh.)

Mr. Mitchell: I object to that on the ground no foundation has been laid to show that this witness knows how Paramount licenses its pictures.

Mr. Corinblit: Here is the chief buyer of Fox.

Mr. Mitchell: That is not Paramount. [788]

Mr. Corinblit: I am going into it a little further.

Q. Mr. Pirosh, you know how pictures are being licensed first run in the Los Angeles area and you have known since 1951 as a buyer?

A. Generally, yes, sir.

Q. Now, you have dealt with all of the film companies in that connection, haven't you?

A. With respect to our theatres?

Q. Yes.

A. Well, I have negotiated for pictures with each of the film companies from time to time.

Q. Now, since September 1951 it is a fact that Paramount has licensed its pictures on a multiple day and date basis?

A. I don't think that is true.

Q. You don't think it is true?

A. I don't think they started in 1951.

Q. When do you remember they started?

A. I think they started in nineteen—I think it was in 1952 or 1953 with the picture *The Greatest Show on Earth*.

Q. How about June of 1952? Does that sound about right?

A. Well, it has more of a chance than 1951.

Q. Now, since September 1951—and I am not trying to pin it down to the date now, but since that

(Testimony of Bert Pirosh.)

time—Warner [789] Bros. has licensed its pictures on a multiple day and date basis, isn't that right?

Mr. Johnston: Your Honor, I am going to object to this. It is going into a period beyond the issues in the complaint, which is September 1951.

The Court: One of the problems here is whether or not the position of the plaintiff is reasonable.

Now, according to the testimony that has been introduced, when the plaintiff asked for pictures originally one of the companies denied them pictures on the ground that they wouldn't give day and date and didn't have any seven-day run in Los Angeles.

Now, if it appears, and it does appear, that after the date in question, that is, after September 1951, they changed their policy so as to have simultaneous first run, it may have something to do with the question of reasonableness.

Mr. Johnston: It could possibly, your Honor, and it could also reflect changing conditions or a number of things where there might be more than one reasonable way to license pictures.

The Court: I think the plaintiff has a right to show this, and if they want to they can argue that they changed their position, and consequently the position they had before was not reasonable.

Mr. Johnston: I don't think that would be a valid [790] question in fact or in law, and that is the basis of my objection.

The Court: We are trying this before a jury,

(Testimony of Bert Pirosh.)

and the jury is the one to determine the facts. The objection is overruled.

Mr. Corinblit: Will you read the question, please.

(Question read as follows:

“Now, since September 1951—and I am not trying to pin it down to the date now, but since that time—Warner Bros. has licensed its pictures on a multiple day and date basis, isn’t that right?”)

The Witness: What is your interpretation, Mr. Corinblit, of “multiple run”?

Q. (By Mr. Corinblit): More than two or three runs.

The Court: You are talking about first run?

Mr. Corinblit: Yes, first run.

The Witness: First run Los Angeles more than three runs?

Mr. Corinblit: Yes.

The Witness: Warner Bros. in the last couple of years have released some of their pictures in this way, but not all of them and not their very good pictures.

Q. (By Mr. Corinblit): Now, I ask you the same question with respect to the distributors RKO.

A. RKO has in the last two or three years released some of its pictures in that way, but when they had a good [791] picture like *The Conqueror*, they played it in three theatres.

Q. They release some of their pictures on a multiple day and date basis?

(Testimony of Bert Pirosh.)

A. Yes, their bad pictures.

The Court: May I ask this witness a question?

Mr. Corinblit: Certainly.

The Court: From what has been testified by the witnesses in this case, I assume that there was a change of policy on the part of all the distributors somewhere around 1950 or '51 in which, instead of having the releases in showcase theatres, they had releases in a number of theatres in different localities in and around Los Angeles. Is that true?

The Witness: That is not true, your Honor.

The Court: That is not true?

The Witness: Not all the distributors and not as early as 1951 by any of them.

The Court: When was this change of policy?

There was a change of policy, was there not?

The Witness: Well, if you want me to tell you what I know about this and how it came about, I will be glad to do it.

The Court: Can't you answer the question: Wasn't there a change of policy?

The Witness: It is not that simple. There was a change of policy on the part of some distributors at some time, and some of them are now very sorry that they went into it. [792]

The Court: All right.

The Witness: This is a pretty complicated question.

The Court: I agree with you, and the jury will agree this is a complicated problem. There is no question about that. All right.

(Testimony of Bert Pirosh.)

He said there was no general change of policy. I thought maybe there was.

Mr. Corinblit: All right. We will go through it company by company, as we have to.

Q. Now, with respect to the distributors, we covered Paramount and covered RKO and we have covered Warners on some of their pictures. [793]

Q. Some of their pictures. We have already had testimony about Loew's. I am thinking of the fifth major. With respect to the distributor Twentieth Century-Fox, some time after 1951, they played their pictures on a multiple day and date policy, is that correct?

The Court: I understand, Mr. Corinblit, that Fox West Coast during all this period of time played Twentieth Century-Fox pictures first run day and date in a number of their theatres.

Mr. Corinblit: Oh, but, your Honor, there is an important change that takes place in 1952. There is an important change. Twenty Century-Fox and Fox West Coast are no longer connected in 1952, so there is a change in that connection. That is another point we will establish here with respect to this matter of multiple day and date, the relationship of change to multiple policy day and date to the fact that Twentieth Century-Fox and Fox West Coast are no longer related to each other after approximately September 1952.

The Court: You are making a statement here, and I don't think there is any evidence before the jury to that effect.

(Testimony of Bert Pirosh.)

Mr. Corinblit: Yes, sir.

The Court: Can we get a stipulation that before 1951 there was a relationship between Twentieth Century-Fox and Fox West Coast? [794]

Mr. Johnston: Yes.

The Court: Can we get a stipulation that after 1951 that relationship no longer existed?

Mr. Johnston: After 1952, your Honor.

The Court: 1952.

Mr. Corinblit: September 1952. Is that about right, counsel?

Mr. Johnston: I believe it was that, approximately. I am simply stipulating this, prior to September, if that is the correct date, 1952, Twentieth Century-Fox owned Fox West Coast for practical purposes, let's assume.

The Court: And after that?

Mr. Johnston: And after that date, the situation did not exist.

The Court: All right.

Q. (By Mr. Corinblit): Now, since September 1952, Mr. Pirosh, Twentieth Century-Fox has licensed its pictures on multiple day and date.

A. Fox has licensed some of its pictures in four areas in the metropolitan Los Angeles area. They have released just about all of their pictures for a one-theatre show case exhibition in this area, and I think they have played one or two very inferior pictures in what you term as 10- or 11-theatre multiple runs, but all of the quality Fox pictures for

(Testimony of Bert Pirosh.)

the last three years, at least, have been played [795]
in a one-theatre show case.

Q. Just one theatre? A. One theatre.

The Court: And that theatre was what?

Mr. Corinblit: Chinese.

The Witness: That theatre could be the Chinese.
That theatre could be the Wilshire. They played
a picture in the Beverly Canon Theatre. They played
a couple of pictures in the Warner's Beverly The-
atre.

The Court: Using just one theatre?

The Witness: Competitive bidding offered to any
exhibitor who has a theatre that they think is suit-
able for a show case run in the downtown Los An-
geles or Hollywood or Wilshire areas, which in their
opinion are the only areas suitable for a show case.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, Uni-
versal since, oh, August, September 1951, prior
thereto, Universal had had five theatres playing first
run. Now, since that time they have expanded the
multiple day and date to even a larger group of the-
atres, isn't that right, or they did during the period
after September 1951?

A. When you keep talking about 1951, you are
going awfully far back on this, Mr. Corinblit. Most
of the companies which went into the so-called mul-
tiple run have done it within the last two or three
years, practically all. [796]

Q. Do you have a distinct recollection on Uni-
versal? I realize your statement is generally correct.

A. I think Universal started to go into this with

(Testimony of Bert Pirosh.)

most of their pictures, I would say in the last two or two and a half years, or maybe three years, but you could find out from the Universal people. I don't know.

Q. Now, with respect to the distributor Columbia, since 1951 at some time that company has exhibited its pictures on multiple first run?

A. Not their better pictures. Picnic was exhibited in one theatre. Autumn Leaves was in one theatre. The Eddy Duchin Story currently is playing Warner's Beverly. The next important picture they have, Solid Gold Cadillac, with Judy Holliday, is being played in one theatre.

Their inferior pictures, a great many of them, they have played in this so-called multiple run, but not their good pictures.

Q. With respect to the distributor United Artists, some time since 1951 they have licensed pictures on a multiple day and date policy?

A. United Artists has shown practically all of their good pictures, their best box-office pictures, in one theatre. They have shown the overwhelming majority of their pictures in three or four theatres. They have shown four or five junky pictures that nobody else wanted to buy in the so-called [797] multiple run.

Q. Even before 1951, Mr. Pirosh, do you remember the term pre-release? Do you remember that?

A. I have heard it used.

Q. What did that term mean?

A. Well, that is a hard question to answer. Pre-

(Testimony of Bert Pirosh.)

release meant one thing to one distributor and another thing to another distributor. Some distributors called a road show picture like *Gone With the Wind*, that played for maybe a year on very high admissions in a very few theaters, they called that a pre-release.

Some companies called any single-theatre run a pre-release.

I don't know what a pre-release is myself.

Q. Prior to 1951, you know there was usually recognized a distinction between pre-release and regular release on first run, do you remember that?

A. No, I don't recall that there was any difference in it then than there is now.

Q. You don't remember that?

A. A pre-release gave a distributor an excuse to try to get higher terms for his pictures.

The Court: You mean there was also an excuse to make the customer pay more to get in the theater, too, don't you? [798]

The Witness: Not in 1951.

The Court: Prices didn't go up?

The Witness: The theatre probably had to pay so much for the picture, your Honor, that they had to raise admission prices to make any money.

Q. (By Mr. Corinblit): Perhaps we can get this one question out of the way. You don't remember the distinction that was generally recognized when you had a road show or pre-release picture as distinguished from a regular first run?

A. The only distinction I recall is that we gen-

(Testimony of Bert Pirosh.)

erally were asked to pay more money for the picture.

The Court: Well, when you paid more money for the picture, you passed that on to the customer, didn't you?

The Witness: That seems to be true in most any business, your Honor. I don't know any other way to get it back.

The Court: The King And I is playing at the Chinese Theatre now?

The Witness: Yes, sir.

The Court: That is a Fox picture?

The Witness: Yes, sir.

The Court: Prices have been raised for The King And I?

The Witness: Yes, we raised prices.

The Court: You paid more for the picture?

The Witness: Yes, sir.

The Court: You are getting more from the customers?

The Witness: Yes, sir, and the customers love the picture.

The Court: It's a good picture, even MGM admits it's a good picture.

The Witness: I am glad to know that Mr. Hickey conceded somebody else had a good picture finally.

Mr. Corinblit: I have no further questions.

Cross Examination

Q. (By Mr. Johnston): Mr. Pirosh, Mr. Corin-

(Testimony of Bert Pirosh.)

blit has asked you about some conversations you had with Mr. Di Cicco and Mr. Kupper in 1949. Will you just tell me or tell the jury, I should say, the date or the approximate date of your first conversation with Mr. William Kupper?

A. As I recall it, my first conversation with Mr. Kupper was somewhere around June 1949.

Q. And then some time after that you had a conversation that you have related this morning with Mr. Pat Di Cicco, is that right?

A. I think my conversation with Mr. Di Cicco was in August or September 1949.

Q. Mr. Corinblit didn't ask you about a conversation [800] that you had with Mr. Kupper later on, and I want you to tell the jury about a subsequent conversation you had with Mr. Kupper, and tell me the date and what was said by you and by Mr. Kupper.

The Court: And the place where the conversation took place.

Q. (By Mr. Johnston): And the place.

A. Well, it was in March or April 1950, approximately.

Q. Where did it take place?

A. In my office in Los Angeles. Mr. Kupper came to me and told me that his theatres were not doing well, he had been playing the La Tijera and Imperial Theatres day and date, and that he wasn't making any money, and that he had decided that from then on he was going to try to license the best

(Testimony of Bert Pirosh.)

pictures released by any companies on a competitive bidding basis.

Q. And what did you say, Mr. Pirosh, if anything?

A. All I could say was, "Okay, we will bid." If I didn't bid, Mr. Kupper would have bought all the best pictures, and we wanted some of them, too. So from then on we bid and it was pretty intensive bidding.

Q. Did you at about that time have a conversation with Mr. Pat Di Cicco?

A. Yes, I had a conversation. I think it was with Mr. Di Cicco, and possibly Fred Stein also. This conversation was either in my office or in the office of United Artists Theatres. [801] The offices were only a couple of blocks away.

Q. Tell us what was said on that occasion, please.

Mr. Corinblit: May we have the time?

Mr. Johnston: Yes, indeed.

Q. About when was this conversation?

A. I would say it was within 48 hours of my conversation with Mr. Di Cicco, possibly the same day. I don't know.

Q. You mean within 48 hours of your conversation with Mr. Kupper?

A. I mean Mr. Kupper. Pardon me.

Q. Yes.

A. I told Mr. Di Cicco and Mr. Stein that Mr. Kupper advised me he was going to commence bidding for all the pictures, and that we were going to

(Testimony of Bert Pirosh.)

bid for the pictures, and in order to book their theatre they would probably have to bid, too. They could do whatever they chose to do.

Q. Now, you say this took place as best you can remember some time in March or April 1950, is that correct, Mr. Pirosh?

A. That is correct.

Q. Both of these conversations?

A. Yes, sir.

Q. And then did you start from that date on bidding for the pictures of all distributors who were offering their films or pictures in the Inglewood-Westchester area on a bidding [802] basis?

A. Well, we made offers on a bidding basis to the companies which had bidding for those pictures which we thought we could make money with in our theatre.

Q. And you continued with that method of purchasing or licensing pictures from that time on continuously through September 1951, isn't that right, Mr. Pirosh?

A. Yes, sir. I think we are still bidding in Inglewood.

Q. I would like to——

The Court: May I ask a question before you leave this subject?

Mr. Johnston: Surely.

The Court: The period of damage in this case is from September 1950 to September 1951. It is your testimony, is it, that during that entire period there was bidding in the Inglewood-Westchester area?

(Testimony of Bert Pirosh.)

The Witness: For the 7 day availability?

The Court: Yes, for the 7 day availability.

The Witness: Yes, sir.

The Court: And you participated in that bidding?

The Witness: We certainly did.

The Court: You didn't have any agreement to lay off the bidding with any distributors, did you?

The Witness: No, sir.

The Court: Or any other parties? [803]

The Witness: No, sir.

The Court: You bid for the pictures that you wanted?

The Witness: Yes, sir.

The Court: And the pictures you didn't want, you didn't bid for?

The Witness: That is correct. Sometimes we had to go back and buy one of them when we couldn't get the picture we wanted.

The Court: All right.

Q. (By Mr. Johnston): Now, perhaps you can tell us about this. What companies in 1950—I am speaking of the period, we will say starting with the month of April, 1950, were offering their pictures on a competitive bidding basis in the Inglewood-Westchester area on the 7 day availability?

A. Well, Metro-Goldwyn-Mayer pictures, or Loew's Inc., whichever it is. [804]

Q. That is the same company? A. Yes.

Q. MGM or Loew's?

(Testimony of Bert Pirosh.)

A. Right, Paramount, RKO and I think Universal and Columbia.

At that time I believe that Warner Bros. and United Artists Picture Company were licensing their pictures by what they called competitive negotiation. They did not write letters to the various exhibitors as in formal competitive bidding but invited offers.

The Court: How about Fox?

The Witness: At that time we were owned by Fox and we were playing their pictures in our own theatres.

Q. (By Mr. Johnston): Then all of the companies or the principal companies licensing pictures, with the exception of Warner Bros. and United Artists and Fox, were licensing pictures starting with this date of April, 1950, on the basis of formal competitive bidding.

Now, by that you mean, Mr. Pirosh, that the company in question who was using this form, would send out a written solicitation for a bid to you and then you would say: "We don't want to bid," or "We offer so much on the picture" in writing in response to solicitation, is that the way it worked? A. That is the way it worked. [805]

Q. And were Warner Bros.—Warner Bros. handled those matters verbally, isn't that right?

A. To the best of my recollection, yes, sir.

Q. And would that be true also with regard to United Artists?

(Testimony of Bert Pirosh.)

A. I am pretty sure that they were handling it that way at that time.

Q. Now, I would like to have you go through with me—I have some bid letters here and I would like to have you go through with me some of these. I don't propose to impose on the court or jury's time to go through all of these, but if you will start with those, Mr. Pirosh.

I have tried to make a summary here and I may have missed some or I may have gotten some incorrectly, but if you will follow along with me, and starting with the month of April, and I think you will find the earliest letter on the bottom of that particular packet. A. Yes.

Q. Will you state whether or not you submitted a bid for an RKO picture on April 3rd for the 7-day availability in April?

A. Yes, for the picture—

The Court: April 3rd of what year?

Mr. Johnston: 1950.

The Witness: With the picture Cinderella, we made an [806] offer.

Q. (By Mr. Johnston): And on April 10th, did you submit a bid to MGM for two pictures on the 7-day availability—I think they are Yellow Cab and Side Street, is that right?

A. Yellow Cab Man.

Q. And Side Street? A. That is correct.

Q. Now, on April 12, 1950, did you submit a bid to MGM on a picture called, I believe, Outriders? A. Yes, we did.

(Testimony of Bert Pirosh.)

Q. And on April 12th, that was for the same availability in the Westchester-Inglewood area?

A. For the 7-day availability.

Q. 7-day availability?

A. That is correct, sir.

Q. Now, on April 12, 1950, did you submit a bid to MGM for a picture called, I believe it is Please Believe Me. Do you find that there?

A. Yes. I made an offer at the Academy Theatre for the 7-day availability.

Q. Now, on April 25, 1950, did you submit a bid on an MGM picture, I think it was The Reformer and The Redhead, if I can read my writing.

A. Yes, we made an offer for The Reformer and The Redhead at our Fox Theatre in Inglewood.

Q. For the 7-day availability?

A. 7-day availability, yes.

Q. All of these questions I am asking you have reference to 7-day availability unless in checking over that list I have picked up some that were for a later availability, so if I have, will you correct me?

A. Yes, sir.

Q. Now, on April 25, 1950, did you submit a bid to RKO for the picture The Capture?

A. Yes. I made an offer at the Academy Theatre.

Q. And on May 1, May 1st, did you submit a bid for the MGM picture Shadow On The Wall?

A. Yes, I did, at the Academy Theatre.

Q. And on May 8th, did you submit a bid to

(Testimony of Bert Pirosh.)

RKO on a picture called Wagon Master, I believe it is?

A. Yes. On May 8th we made an offer on Wagon Master at the Fox Theatre.

Q. And on May 15th, did you submit a bid to Universal on the picture Comanche Territory?

A. On May 15, 1950, I made an offer for the Academy Theatre.

Q. Now, on May 15th also of 1950, did you submit a bid to Paramount on a picture called No Man of Her Own?

A. Yes. I made an offer for the picture at our Fifth Avenue Theatre. [808]

Q. And on May 18th, did you make an offer to RKO for a picture entitled Tarzan And The Slave-girl?

A. Yes, for the Fox Theatre.

Q. And on May 22nd, did you make an offer on a Columbia picture called No Sad Songs For Me?

A. Yes. I made an offer for the picture in the Academy Theatre.

Q. And on May 29th, did you submit a bid to Paramount for a picture entitled The Eagle and the Hawk?

A. Yes, Eagle and the Hawk for the Fox Theatre.

Q. Now, in June of 1950, on the 2nd day of June, 1950, did you submit a bid to Universal on the picture Sierra?

A. I did, for the Fifth Avenue Theatre.

Q. And in June of 1950, on the 5th day of June,

(Testimony of Bert Pirosh.)

did you submit a bid to RKO for a picture called Secret Fury?

A. I made an offer for the Fox Theatre.

Q. And on the same date did you submit a bid to Universal for the picture called Spy Hunt?

A. At the Academy Theatre.

Q. On June 12, 1950, did you submit a bid to Eagle-Lion for a picture called The Torch?

A. Yes, for the Academy Theatre.

Q. And on June 15, 1950, did you submit a bid to MGM for the picture Annie Get Your Gun?

A. Yes. I made an offer for the Academy Theatre. [809]

Q. And on June 19th, did you submit a bid to Universal for the picture Peggy?

A. Yes, for the Academy Theatre.

Q. And on June 19th, did you submit a bid to Columbia for a picture called Kill The Umpire?

A. At the Fifth Avenue Theatre.

Q. And on June 26th, 1950, did you submit an offer to Universal for Curtain Call At Cactus Creek?

A. At the Academy Theatre.

Q. And on June 26th, did you submit a bid to RKO for the picture White Tower?

A. At the Academy Theatre.

Q. And on June 26th, did you submit a bid to MGM or Loew's for the picture called Crisis?

A. At the Fifth Avenue Theatre.

Q. And on June 26th, the same date, did you submit a bid to MGM for a picture called Father of the Bride?

A. Academy Theatre.

(Testimony of Bert Pirosh.)

Q. Now, on June 29th, did you submit a bid to RKO for a picture called *The Woman On Pier 13*?

A. At the Academy Theatre.

Mr. Johnston: Your Honor, I suggest we stop here. We are through with the month of June.

The Court: Yes. The way we are going, we wouldn't be able to complete that list before time to take a recess. [810]

Ladies and gentlemen of the jury, we are about to take another recess, and again it is my duty to admonish you not to discuss this case with anyone nor permit anyone to discuss it with you. You are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now be in recess until 2:00 o'clock this afternoon.

(Whereupon at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same date.) [811]

Wednesday, July 18, 1956, 2:00 P.M.

The Court: Is it stipulated the jury is present in the box?

Mr. Johnson: So stipulated, your Honor.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

BERT PIROSH

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

(Testimony of Bert Pirosh.)

Cross Examination

Q. (By Mr. Johnston): I think this morning, Mr. Pirosh, we had gone through the month of June with respect to these bid letters, if I remember correctly. I will ask you to put before you the group of letters starting with July 1950.

Now, on July 5, 1950, did you submit a bid to Paramount on the picture *My Friend Irma Goes West*?

A. Yes, in the Academy Theatre.

Q. And on June 12, 1950, did you submit a bid for the 7 day availability in the Inglewood-Westchester area to MGM on three pictures, *The Skipper Surprised His Wife*, *Stars in My Crown*, and *Duchess of Idaho*? [812]

A. Yes, in the Fifth Avenue Theatre.

Q. Now, I notice in reviewing these letters a withdrawal on July 19th on a bid that you had made to Universal for this *Cactus Creek* thing—I have forgotten the complete title of it. Let's see if you can find that.

A. I am looking for it. Yes, sir, I have it.

Q. In a mode of distribution of pictures pursuant to bidding, it is necessary for you as an exhibitor, not knowing whether you are going to be awarded a bid or not, to sometimes bid for the same play dates, is it not?

A. Frequently we must make offers on several pictures which are available on the same dates.

Q. And the reason for that is you don't know

(Testimony of Bert Pirosh.)

whether in any particular instance you are going to get a bid or you are not going to get a bid?

A. You don't know when you make the bid if you are going to get any of the pictures.

Q. So then you sometimes find yourself in a situation, do you not, of having two pictures available at the same time, because you have been awarded two bids, isn't that right?

A. Well, that would be possible, but generally if we were awarded a picture for a certain availability and we had previously made an offer on another picture for that same availability, after we received one picture, we would then withdraw our offer for the picture which had not yet been awarded. [813]

Q. I see. So that I have noticed going through those letters in front of you certain instances of withdrawals of bids, and the reason for those withdrawals, generally speaking, is just what you have stated now, is that right? A. Yes, sir.

Q. On July 12, 1950, you submitted a bid to MGM for three pictures, Happy Years, Duchess of Idaho, and Mystery Street, is that right?

A. At our Academy Theatre.

Q. On July 13, 1950, you submitted a bid to Universal for the Picture Winchester .73, is that right? A. At the Academy Theatre.

Q. On July 17 you submitted a bid to Columbia for the picture Rogues of Sherwood Forest, is that right?

(Testimony of Bert Pirosh.)

A. July 17? Yes, sir. We submitted an offer at our Academy Theatre.

Q. Now, during this period of time, Mr. Pirosh, I am speaking of the year 1950-51, what was the, I should say ranking or desirability of Columbia pictures, generally speaking, from your standpoint as an exhibitor?

A. Well, Columbia in general had fewer good box-office pictures, fewer pictures that the public wanted to see, than companies like Metro or Paramount or Warner Bros. I think that they spent a lot less on their overall production than the other companies did. [814]

Q. Now, with respect to Columbia during this period and perhaps it is also true with respect to certain other distributors, if, we will say, Columbia did not receive satisfactory offers in response to its solicitation for bids, what would it then do?

Mr. Corinblit: I object to that as calling for the witness' conclusion as to what Columbia would do.

Q. (By Mr. Johnston): With respect to your own company?

The Court: It is what would you do.

Q. (By Mr. Johnston): What would you do with respect to Columbia product which had been first sent out on bids and then later negotiated for by you?

A. Well, if I should find myself in the position, which we frequently did, of not having received the good pictures we had made bids on for a certain date, and if Columbia had an inferior pic-

(Testimony of Bert Pirosh.)

ture available at that time, which was not yet sold to the other theatres, we would attempt to buy the picture for our theatre through ordinary negotiations.

Q. Now, in some of those situations, in purchasing film or licensing film from Columbia, you knew that Columbia previously had tried to sell that picture on a bidding basis, isn't that right?

A. That is right.

Q. And then being unable to do so, they tried to sell [815] it anyway they could, isn't that right?

A. Well, I suppose that is what they did. And if we didn't have anything better to play in our theatre, we had to take what we could get.

Q. Now on July 17, 1950, did you submit a bid to Eagle-Lion for the picture Jackie Robinson Story?

A. Yes. At our Academy Theatre.

Q. In Inglewood? A. In Inglewood.

Q. You understand, Mr. Pirosh, that all of these bids I am talking about have reference to the Inglewood area?

A. Also on the 7-day availability.

Q. That is right. Now, on July 17, 1950, did you submit a bid on the Paramount picture Lawless?

A. Yes. We submitted an offer for the Lawless at our Academy Theatre in Inglewood.

Q. And on July 18th, you submitted a bid to Columbia for the picture 711 Ocean Drive?

A. That is correct, at our Fox Theatre.

(Testimony of Bert Pirosh.)

Q. And on July 24th, you submitted a bid to MGM for the picture Three Little Words?

A. Yes. We made an offer at our Academy Theatre in Inglewood.

Q. And on July 31st you submitted an offer to Paramount [816] to bid on the picture called Furies, is that right?

A. Yes, at the Fox Theatre.

Q. Now, going to the month of August, August 1, 1950, you submitted a bid to Universal for the picture entitled Abbott and Costello in the Foreign Legion?

A. Yes, sir, at our Academy Theatre.

Q. And on August 4th you submitted a bid to RKO for the picture entitled Treasure Island?

A. Yes, sir, at the Academy Theatre.

Q. And on August 6th, a bid was submitted by you to Eagle-Lion for the picture Destruction at Noon, I believe is the way I have it written here.

A. No, that is Destination Moon.

Mr. Mitchell: All the same.

The Witness: We submitted an offer at our Academy Theatre.

Mr. Johnston: I had better take lessons in penmanship or get some glasses, one or the other.

Mr. Corinblit: Practically the same thing.

Q. (By Mr. Johnston): Now, August 11, 1950, Mr. Pirosh, did you submit a bid to Eagle-Lion for the picture called Eye Witness?

A. Yes, at our Academy Theatre.

Q. And on August 16th, did you submit a bid to

(Testimony of Bert Pirosh.)

MGM for two pictures, *Lady Without a Passport* and *Summer Stock*? [817]

A. Yes, both at our Academy Theatre.

Q. And on July 21st, did you submit a bid to Universal for the picture, I believe it is *Desert Hawk*.
A. August 21st?

Q. August 21st, yes, pardon me.

A. Yes.

Q. And August 28th, did you submit a bid to Columbia for the picture entitled *In a Lonely Place*?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on August 29th, you submitted a picture to Paramount—you submitted a bid to Paramount, did you not, for the picture entitled *Sunset Boulevard*?

A. At our Academy Theatre.

Q. Now, I wish you would look at the same group of papers you have been holding in your hand there, and look to a document which is dated August 18, 1950, I believe.

Mr. Johnston: Your Honor, at this time I should like to offer into evidence the document I have referred to, together with all of these bid letters, part of which I have been reading, as the defendant Fox's first in order.

The Court: May be received.

The Clerk: Is that one that you have on this list?

Mr. Johnston: No.

(Testimony of Bert Pirosh.)

The Clerk: I have a listing of Twentieth Century-Fox.

Mr. Johnston: It isn't on the list. [818]

The Court: What is the number, then?

Mr. Johnston: It will have to be assigned a number independently of that list, your Honor.

Mr. Corinblit: These are one of the joint plaintiff and defendant exhibits.

Mr. Johnston: Have you marked them, Mr. Corinblit?

Mr. Corinblit: I don't believe they have been marked.

The Clerk: Do you have one there?

Mr. Johnston: I have them right here.

The Clerk: Is that going to become one of these exhibits? There are three defendants on here, or do you want it as a separate exhibit of Fox?

Mr. Johnston: You can make it a separate exhibit of Fox if you wish, or the Fox defendants, however you wish to designate it.

The Clerk: Twentieth Century-Fox National Theatre Exhibit B in evidence.

(The exhibit referred to was marked Twentieth Century-Fox National Theatre Exhibit B, and received in evidence.) [819]

Mr. Johnston: Now, with the court's permission, I should like to read the particular document I referred to a moment ago.

This is a document which bears the typewritten signature of Bert Pirosh. It is dated August 18, 1950, and reads as follows:

(Testimony of Bert Pirosh.)

"RKO has notified me that they are including the Paradise Theatre in the competitive bidding for the 7 day availability, Inglewood, California.

"They have, likewise, notified me that effective with the release of *Treasure Island* they are instituting competitive bidding for the 14 day availability in Inglewood.

"On both the 7 and 14 availabilities RKO is going to license one run only on a competitive bidding basis and are reserving the right to license a second run in the general competitive area embracing Inglewood to some theatre which is not in substantial competition with the highest bidder."

Mr. Corinblit: What is the date of that, counsel?

Mr. Johnston: That is August 18, 1950.

Mr. Corinblit: And the bid letters in the group are all dated——

Mr. Johnston: July and August 1950, Mr. Corinblit.

Mr. Corinblit: Thank you. [820]

Q. (By Mr. Johnston): In September, 1950, September 1 of that year, did you submit—on September 6, I beg your pardon, Mr. Pirosh, did you submit a bid to Universal for the picture *Louisa*?

A. Yes, at the Academy Theatre.

Q. On September 6 of the same year, did you submit a bid to RKO for the picture *Our Very Own*?

A. At the Academy Theatre.

Q. And on September 18, 1950, did you submit a bid for an MGM picture, *Toast of New Orleans*?

A. At the Fifth Avenue Theatre.

(Testimony of Bert Pirosh.)

Q. And on August 18 did you likewise submit a bid to MGM on the picture *A Life of Her Own*?

A. That was September 18.

Q. You are right. September 18, 1950.

A. Yes, on September 18, 1950, we submitted an offer to Metro for *A Life of Her Own* at our Academy Theatre.

Q. And on September 19, did you submit a bid to Universal for the picture called *Saddle Tramp*?

A. Yes, at our Academy Theatre.

Q. On September 19, did you submit a bid to MGM for three pictures, *Toast of New Orleans*, *Devil*—you will have to help me with that one, if you can find it.

A. *Devil's Doorway*.

Q. *Devil's Doorway*, and I think the third one is *Right [821] Cross*.

A. One letter seems to be misfiled here, Mr. Johnston. We did make offers on September 19 for *Right Cross* and *Devil's Doorway*. The other letter referred to another town and is apparently misfiled.

Q. So in the Inglewood area you did make on—what date?

A. September 19.

Q. September 19, 1950, offers for the two pictures, *Devil's Doorway* and *Right Cross*.

A. *Devil's Doorway* and *Right Cross*, at the Fox Theatre, that's right.

Q. And on September 22, you made a bid on the RKO picture *Born To Be Bad*, is that right?

A. At the Fifth Avenue Theatre.

Q. And on September 27, you made an offer on

(Testimony of Bert Pirosh.)

the Universal picture entitled Shakedown, is that right? A. At the Academy Theatre.

Mr. Johnston: Now, I should like to offer as Fox C the group of documents just referred to.

Mr. Corinblit: May I just go through them before your Honor rules?

Mr. Johnston: Certainly. I have the purpose of reading a document which is dated September 11 in that group, Mr. Corinblit. [822]

Mr. Corinblit: You say September 11?

Mr. Johnston: I believe that is the date.

Mr. Corinblit: No objection.

The Court: It may be received in evidence.

The Clerk: Fox Exhibit C.

(The exhibit referred to was received in evidence and marked as Defendant Fox' Exhibit C.)

Mr. Corinblit: May I have the dates covered by the group again?

Mr. Johnston: The tab on the front of it, Mr. Corinblit, says 1950, third quarter, September.

Mr. Corinblit: Thank you.

Mr. Johnston: With the court's permission, I should like to read a document in this group which is dated September 11, 1950, over the typewritten signature of Bert Pirosh.

"Metro has advised me that in the future the Paradise Theatre, Los Angeles, California, will be included in the bidding with the La Tijera Theatre, Los Angeles, California, and the first run theatres in Inglewood, California."

(Testimony of Bert Pirosh.)

Q. Now, calling your attention to the last phrase in this document I have just read, the phrase, "the first run theatres in Inglewood, California," it was your understanding, was it not, that that meant the theatres playing on the 7 day availability in Inglewood? [823] A. That is correct.

Q. Now, if you will go to the file containing the October letters, Mr. Pirosh, on October 4th you submitted a bid to Paramount for the picture called *Fancy Pants*?

A. That is correct, at our Academy Theatre in Inglewood.

Q. And on October 13, you submitted a bid on the MGM picture *Next Voice You Hear*?

A. At the Fifth Avenue Theatre.

Q. And on October 13, you submitted a bid on the RKO picture *Walk Softly, Stranger*?

A. At our Academy Theatre.

Q. And on October 23, you submitted a bid on the Universal picture *Wyoming Male*?

A. At the Fox Theatre.

Q. On the 24th of that month, October, you submitted a bid to Paramount for the picture entitled *Union Station*? A. At the Fox Theatre.

Q. And on the 31st of October you submitted a bid to Universal on a picture called *Woman On The Run*? Do you find that one?

A. I am looking. Yes, at our Academy Theatre.

Q. And on October 31 you submitted a bid to MGM on the picture entitled *The Miniver Story*?

A. At our Fox Theatre. [824]

(Testimony of Bert Pirosh.)

Q. And on October 31st, you submitted a bid to MGM on the picture—I believe it is *To Please A Lady*?

A. That is correct. That was at the Fifth Avenue Theatre.

Q. And in November, 1950, November 8, you submitted a bid to MGM for the picture called *King Solomon's Mines*?

A. We sure did. At the Fifth Avenue Theatre.

Q. What did you offer as terms?

A. We offered guaranteed minimum film rental of \$5,100 for the picture, and did very well when it played.

Q. Did you on November 9, 1950, submit a bid for the Universal picture called *Deported*?

A. Yes, we did, at our Academy Theatre.

Q. On November 10, 1950, did you submit a bid to Columbia for the picture *The Last of The Buccaneers*?

A. Yes, sir, at our Academy Theatre.

Q. On November 14, 1950, did you submit a bid to Universal for the picture called *Kansas Raiders*?

A. Yes, at our Academy Theatre.

Q. On November 20, did you submit a bid to Eagle-Lion for the picture called *High and something or other*—I don't know the rest of it. Is it *High And Lonesome*?

A. *High And Lonesome*, at our Academy Theatre.

Q. On November 20, 1950, did you submit a bid on a Paramount picture called *Copper Canyon*?

A. At our Academy Theatre.

(Testimony of Bert Pirosh.)

Q. And on November 21 did you submit a bid on the MGM picture Dial 1119?

A. Yes, sir, at the Fox Theatre.

Q. At the Fox Theatre in Inglewood?

A. Fox Theatre in Inglewood.

Q. On November 27, 1950, did you submit a bid on an RKO picture called Mad something—it looks like Mad Wednesday?

A. Mad Wednesday is correct. At the Academy Theatre.

Q. On November 27, 1950, did you submit a bid on a Universal picture called Milk Man?

A. Yes, sir, at our Academy Theatre. [826]

Q. I believe that bid was withdrawn. If you find a withdrawal, you might call my attention to it as we go through here.

Now, on December 13, 1950, did you submit a bid on the Paramount picture Let's Dance?

A. Yes, at the Academy Theatre.

Q. And on December——

A. And I notice that on December 4, 1950, we withdrew the offer for the Milkman at the Academy Theatre.

Q. On December 27, 1950, you submitted a bid on the Universal picture called Frenchie, did you not? A. Yes, at the Academy Theatre.

Q. And on December 27, 1950, you submitted a bid on the MGM picture called Pagan Love Song?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. Now, in the year 1951, on January 2nd, did

(Testimony of Bert Pirosh.)

you submit a bid on the Paramount picture called Mr. Music?

A. Yes, sir, at the Academy Theatre.

Q. We are still talking about Inglewood, and we are still talking about the 7-day availability in Inglewood. You understand that?

A. I am. Yes, sir.

Q. There are some bids in those letters before you for the 14-day availability included, which we haven't discussed, are there not? [827]

A. There are a great number.

Q. You have seen them as you have gone through them?

A. There are a great number of bids for 14-day availability.

Q. Now, on January 4, 1951, did you submit a bid for the Loew's picture Mrs. O'Malley and Mr. Malone? A. Yes, sir, at the Academy Theatre.

Q. And on January 8, 1951, did you submit a bid for the RKO picture called Outrage?

A. At our Academy Theatre.

Q. And on January 8, 1951, you submitted a bid for the Eagle-Lion picture called Rogue River?

A. Yes, at the Academy Theatre.

Q. And on January 9, 1951, you submitted a bid for the Metro picture called Ground For Marriage?

A. Yes, at the Fifth Avenue Theatre.

Q. And on January 9, 1951, you submitted a bid for the picture called Watch The Birdie, I guess.

A. That is right.

Q. That is a Metro picture, is that right?

(Testimony of Bert Pirosh.)

A. Watch The Birdie, yes. That was at the Academy Theatre.

Q. Then on January 3, 1951, you submitted a bid for the Paramount picture called Branded?

A. Yes, at the Academy Theatre. [828]

Q. January 23, 1951, you submitted a bid for the Metro picture entitled Kim?

A. At the Fifth Avenue Theatre.

Q. And on January 29th, you submitted a bid for the Metro picture The Magnificent Yankee, is that right?

A. That is correct, at the Academy Theatre.

Q. January 29th, you submitted a bid for the Universal picture Harvey, is that right?

A. Yes, at the Academy Theatre.

Q. And on February 5th, you submitted a bid for the Paramount picture At War With The Army, is that right?

A. At the Academy Theatre and also on January 29th we made an offer for Dark City from Paramount at the Academy Theatre.

Q. I see. And on February 9, 1951, you submitted a bid for the Metro picture Cause For Alarm, did you not?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on February 15, 1951, you submitted a bid for the Paramount picture At War With The Army?

A. At the Academy Theatre.

Q. February 19th, you submitted a bid for the RKO picture The Company She Keeps?

A. Yes, at the Academy Theatre.

(Testimony of Bert Pirosh.)

Q. February 26, 1951, you submitted a bid for the Metro picture Vengeance Valley, did you not?

A. February 26th—yes, at the Fifth Avenue Theatre.

Q. And on February 26, 1951, you submitted a bid for the RKO picture Cry Danger?

A. At the Fifth Avenue Theatre.

Q. And on February 26th, you also submitted a bid for the Universal picture called Tomahawk?

A. At the Academy Theatre.

Q. February 27, 1951, you submitted a bid for the Paramount picture called The Great Missouri Raid?

A. At the Academy Theatre.

Q. February 27, 1951, you submitted a bid for the RKO picture called Gambling House?

A. At the Academy Theatre.

Q. Now, may I see, Mr. Pirosh, that group that you have just gone through.

A. There is another group.

Q. I will look at both of them.

A. We are down to here on this one.

Q. All right. I should like to offer the group of letters starting with a letter dated January 2, 1951, and ending with a letter dated February 15, 1951, as the defendant Fox's next in order.

And I intend to, if the evidence is received, read the letter dated February 14th, Mr. Corinblit, the memorandum dated February 14th. [830]

(Handing document to Mr. Corinblit.)

Mr. Corinblit: No objection.

The Court: It may be received in evidence.

(Testimony of Bert Pirosh.)

The Clerk: Fox's Exhibit D in evidence.

(The exhibit referred to was marked Fox's Exhibit D, and received in evidence.)

Mr. Johnston: Now, if I may, your Honor, I should like to read the document which is dated February 14, 1951, which is a part of Exhibit D.

"Paramount has notified me that effective with At War With The Army, the Centinela Drive-In and the Century Drive-In will be given the privilege of negotiating competitively for the 7 and 14-day availabilities in the Inglewood area."

Q. Can you point out where those two theatres are, Mr. Pirosh. Will you come down here and point them out?

A. Here is the Centinela and here is——

Q. Will you stand over here so the jury can see what you are doing?

The Court: I can't hear you.

Q. (By Mr. Johnston): Just point out to me where the Centinela and the Century Drive-Ins are?

A. This is the Centinela Drive-In and this is the Century Drive-In.

Q. Thank you. [831]

The Court: How far are those drive-ins from Inglewood?

The Witness: The Centinela Drive-In I would say is approximately three miles from downtown Inglewood.

The Century Drive-In is perhaps a mile or a mile and a half from there, and even closer to the Academy and Fifth Avenue Theatres. Here is the Cen-

(Testimony of Bert Pirosh.)

tury Drive-In. Here is the Academy Theatre, and here is downtown Inglewood.

The Court: Would you consider those two drive-ins in substantial competition with the Fox theatres in that area?

The Witness: Yes, sir, and they still are.

Q. (By Mr. Johnston): You may resume the stand.

Now, Mr. Pirosh, we will get to this other document which I have in mind in just a moment.

Starting with the month of March and the year 1951, did you submit a bid to Paramount on March 12th for a picture called September Affair?

A. Yes, at the Academy Theatre.

Q. And on March 12, 1951, did you submit a bid on a picture Never A Dull Moment, an RKO picture?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on March 12, 1951, did you submit a bid for the Metro picture Inside Straight?

A. At the Academy Theatre.

Q. And on March 12th, did you submit a bid for the Metro picture Father's Little Divident? [832]

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on March 12th, did you submit a bid for the Metro picture Royal Wedding?

A. Yes, sir, at the Fox Theatre.

Q. And on March 14th, did you submit a bid for the Eagle-Lion picture Perhistoric Woman?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on March 15th, 1951, did you submit a bid for the RKO picture Never A Dull Moment?

(Testimony of Bert Pirosh.)

A. Yes, sir, at the Academy Theatre.

Q. And on March 19th, did you submit a bid for the RKO picture *Vendetta*?

A. At the Academy Theatre.

Q. And on March 19th, did you submit a bid for the Paramount picture *Redhead And The Lady*?

A. *Redhead And The Cowboy* it should be. At the Academy Theatre.

Q. Did you submit a bid on March 20th for the Universal picture *Bedtime For Bonzo*?

A. Yes, at the Academy Theatre.

Q. And on March 27, 1951, did you submit a bid for the Universal picture *Target Unknown*?

A. At the Academy Theatre.

Q. And on March 27, 1951, you submitted a bid for the Paramount picture *The Mating Season*?

A. Yes, at the Academy Theatre.

Q. And on March 27, 1951, did you submit a bid for the United Artists picture *Sound of Fury*?

A. That is March 30th, Mr. Johnston.

Q. March 30th? A. Yes, at the Fox Theatre.

Mr. Johnston: May I have the group of letters just previous to that or have you already given that to me?

The Witness: Yes.

Mr. Johnston: I should like to offer in evidence the group of documents starting with the date of February 19, 1951, and ending with the date of March 30, 1951, your Honor, as defendant Fox's next in order.

Mr. Corinblit: May I see them, please?

(Testimony of Bert Pirosh.)

Mr. Johnston: Certainly. I beg your pardon. I have reference to the document——

Mr. Corinblit: Which date?

Mr. Johnston: February 19th, starts at February 19th and ends March 20th, I believe, or March 30th. [834]

Mr. Corinblit: No objection.

The Court: In evidence.

The Clerk: Fox Exhibit E.

(The exhibit referred to was received in evidence and marked as Defendant Fox's Exhibit E.)

Mr. Corinblit: Could we have the dates again, counsel? I missed them. I am sorry.

Mr. Johnston: The dates, Mr. Corinblit, of this group which has been received in evidence, Defendants' Exhibit E, start with February 19, 1951, and end with March 30, 1951.

Mr. Corinblit: Thank you.

Mr. Johnston: I would like to read, if I may, your Honor, a document dated February 19, 1951, which comprises a part of Exhibit E.

"RKO has notified me that effective immediately the Century Drive-In Theatre will be given the privilege of bidding for the 7 and 14 day availabilities in Inglewood, California.

"Bert Pirosh"

Q. Now, turn, if you will, to the group of documents starting in April, 1951, Mr. Pirosh, and on April 2, 1951, you submitted a bid on the RKO picture Payment On Demand, did you not?

(Testimony of Bert Pirosh.)

A. Yes, sir, at our Fifth Avenue Theatre. [835]

Q. And on April 2, 1951, you submitted a bid on the Paramount picture *Samson And Delilah*?

A. At our Fifth Avenue Theatre.

Q. April 5, 1951, you submitted a bid on the Universal picture *Abbott and Costello*—do something or other.

A. *Meet The Invisible Man*.

Q. Yes. A. At our Fox Theatre.

Q. On April 9, 1951, you submitted a bid on the Columbia picture *Al Jennings of Oklahoma*.

A. Yes, sir, at the Academy Theatre.

Q. On April 10, 1951, you submitted a bid on the Paramount picture *Lemon Drop Kid*.

A. At the Academy Theatre.

Q. On April 11, 1951, you submitted a bid on the Universal picture *The Groom Wore Spurs*.

A. At the Academy Theatre.

Q. On April 11, 1951, you submitted a bid on the Columbia picture *Valentino*.

A. At the Fifth Avenue Theatre.

Q. On April 26, 1951, you submitted a bid for the RKO picture *The Thing From Another World*.

A. At our Academy Theatre.

Q. On the 27th you submitted a bid for the Universal picture entitled *Up Front*. [836]

A. At the Academy Theatre.

Q. On May 3, 1951, you submitted a bid for the Columbia picture entitled *Manhunt*.

A. At the Academy Theatre.

(Testimony of Bert Pirosh.)

Q. And on May 3, 1951, you submitted a bid for the Columbia picture *Fury of The Congo*.

A. At the Fifth Avenue Theatre.

Q. On May 7 you submitted a bid for the United Artists picture called *Second Woman*.

A. At the Fifth Avenue Theatre.

Q. On May 9, 1951, you submitted a bid for the Columbia picture entitled *Santa Fe*.

A. At the Fifth Avenue Theatre.

Q. And on May 9, 1951, you submitted a bid for the Universal picture *Double Cross Bones*?

A. At the Fifth Avenue Theatre.

Q. On May 9, 1951, you submitted a bid for the Universal picture entitled *Air Cadet*.

A. At the Academy Theatre.

Q. On May 10, 1951, you submitted a bid for the Republic picture *Fighting Coast Guard*.

A. Yes, sir, at the Academy Theatre.

Q. And on May 14, 1951, you submitted a bid for the RKO picture *My Forbidden Past*.

A. At the Fifth Avenue Theatre. [837]

Q. On May 14, 1951, you submitted a bid for the Columbia picture *The Brave Bulls*.

A. At the Fifth Avenue Theatre.

Q. And on May 14, 1951, you submitted a bid for the Columbia picture *He's A Cockeyed Wonder*.

A. At the Fifth Avenue Theatre.

Q. On May 15, 1951, you submitted a bid for the picture *Go For Broke*.

A. Yes, sir, at the Fifth Avenue Theatre.

Q. On May 29, 1951, you submitted a bid for

(Testimony of Bert Pirosh.)

the Paramount picture Appointment For Danger.

A. Yes, sir, at the Academy Theatre.

Q. On May 31, you submitted a bid for the Universal picture Katie Did It.

A. At the Academy Theatre.

Q. On June 4th you submitted a bid for the Metro picture entitled Great Caruso.

A. Yes, sir, Fifth Avenue Theatre.

Q. And on June 6, 1951, you submitted a bid for the United Artists picture—I can't read this. In fact, on that date you submitted three bids to United Artists, did you not?

A. Yes, sir. Fabiola at the Academy Theatre, The Hoodlum at the Academy Theatre, and Circle of Danger at the Academy Theatre.

Q. On June 11, you submitted a bid to Paramount for [838] The Last Outpost.

A. Yes, sir, at the Academy Theatre.

Q. On June 15 you submitted a bid to RKO for the picture Best of The Bad Men.

A. At the Fifth Avenue.

Q. On June 18 you submitted a bid to Paramount for the picture entitled Trio.

A. Yes, sir, at the Fifth Avenue Theatre.

Q. On June 19th, you submitted a bid to Universal, one for the picture Apache Drums and one for the picture Hollywood Story, is that right?

A. Yes, sir, both at the Academy Theatre.

Q. On June 22nd you submitted a bid to RKO for the picture called Tarzan's Peril.

A. Yes, sir, Fox Theatre.

(Testimony of Bert Pirosh.)

Q. And on June 26 you submitted a bid to Paramount for the picture called *Dear Brat*.

A. At the Fifth Avenue.

Q. On June 28 you submitted a bid to Universal for the picture called *The Prince Who Came Back*.

A. At the Fifth Avenue Theatre.

Q. On July 6, 1951, you submitted a bid to MGM for the picture—I believe it is called *Night Into Morning*, is that right?

A. Yes, sir, at the Academy Theatre. [839]

Q. On July 17, 1951, you submitted a bid to Paramount for a picture called *Passage West*, is that right?

A. That's right, at the Fifth Avenue Theatre.

Q. And on July 17, 1951, you submitted a bid to Universal for the picture called *Coming Round The Mountain*, is that right?

A. At the Academy Theatre, that's right.

Q. On July 17, you submitted a bid to RKO for the picture entitled *Alice In Wonderland*?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. On July 20, 1951, you submitted a bid to Columbia for the picture called *Lorna Doon*?

A. July 20th?

Q. That is what my notes show. Maybe I am in error.

A. That is correct, at the Fifth Avenue Theatre, and also *Mask of The Avenger* at the Academy Theatre.

Q. On the same date?

A. July 20, 1951.

(Testimony of Bert Pirosh.)

Q. On July 23, 1951, did you submit a bid for the picture *Cyrano de Bergerac*?

A. That was July 23, 1951?

Q. Yes, sir.

A. *Cyrano de Bergerac*, at the Academy Theatre in Inglewood.

Q. July 24, 1951, did you submit a bid for the UA picture [840] called *Oliver Twist*?

A. At the Fifth Avenue Theatre.

Q. And on July 25, did you submit a bid to Paramount for the picture entitled *Pekin Express*?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. July 30, 1951, did you submit a bid to Universal for the picture called *Cattle Drive*?

A. At the Academy Theatre.

Q. On July 30, 1951, did you submit a bid to Paramount for the picture called *War Path*?

A. At the Fifth Avenue Theatre.

Q. On July 31, 1951, did you submit a bid to Paramount for the picture *That's My Boy*?

A. At the Academy Theatre.

Q. On August 6, 1951, did you submit a bid to United Artists for—I think it is either *Pair In A Jeep* or *Four In A Jeep*.

A. *Four In A Jeep*, yes, sir, at the Academy Theatre.

Q. On August 10, 1951, did you submit a bid to Paramount for a picture *Here Comes The Groom*?

A. Yes, sir, at the Academy Theatre.

Q. And on August 20, 1951, did you submit a bid to Paramount for the picture *Big Carnival*?

(Testimony of Bert Pirosh.)

A. At the Academy Theatre.

Q. On August 24, 1951, did you submit a bid to Universal [841] for the picture Francis Goes to The Races?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on August 29, 1951, did you submit a bid to RKO for the picture Kontiki?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. August 31, 1951, did you submit a bid to RKO for the picture Hard, Fast and Beautiful?

A. At the Academy Theatre.

Q. Now we are down to the last month, anyway, I think. On September 11, 1951, did you submit a bid for the RKO picture His Kind of A Woman—something like that—His Kind of A something.

A. His Kind of A Woman on September 11th—no, we did not make an offer at that time for it.

Q. Did you submit a bid on September 10, 1951, for the United Artists picture Queen For A Day?

A. Yes, sir, at the Academy Theatre.

Q. And on September 24th did you submit a bid for the RKO picture Behave Yourself?

A. At the Fifth Avenue Theatre.

Q. And on September 24th did you submit a bid for the Paramount picture Rhubarb?

A. Yes, sir, at the Fifth Avenue Theatre.

Q. And on September 24 did you submit a bid for the United Artists picture entitled New Mexico?

A. Yes, sir, at the Academy Theatre.

Q. And on September 24, 1951, did you submit a bid for the Republic picture Adventures of Cap-

(Testimony of Bert Pirosh.)

tain—somebody or other? A. Fabian.

Q. Adventures of Captain Fabian, is it?

A. Yes, sir, Adventures of Captain Fabian, at the Academy Theatre.

Q. On September 28, 1951, did you submit a bid for the MGM picture The People Against O'Hara?

A. Yes, sir, at the Fifth Avenue Theatre, and on September 24, 1951, we submitted an offer for another Republic picture called The Sea Hornet at the Academy Theatre.

Q. The what? A. Sea Hornet.

Mr. Johnston: Your Honor, I should like to offer the remaining groups of these letters which I have not heretofore offered as the Defendant's Fox next in order.

Mr. Corinblit: Do you want to offer them by groups?

Mr. Johnson: I think that would be the more orderly way of doing it.

Mr. Corinblit: I agree with you.

Mr. Johnston: Is there any objection to the offer? You have gone through these, I know. [843]

Mr. Corinblit: I would like to take a run through them, if I can.

Mr. Johnston: Certainly. I will defer my offer until after the recess.

The Court: Suppose we take the recess now and you can look at them and then offer them when we come in after recess.

Mr. Johnston: Very good your Honor.

The Court: Ladies and gentlemen of the jury

(Testimony of Bert Pirosh.)

we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until 10 minutes after 3:00.

(Recess.) [844]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Westbrook: So stipulated.

The Court: You may proceed.

Mr. Johnston: Your Honor, at this time I should like to offer in evidence as defendant Fox's next in order, exhibits lettered F through M, inclusive.

Mr. Corinblit: No objection.

The Court: They may be received.

(The exhibits referred to were marked Defendant Fox's Exhibit F through M, inclusive, and received in evidence.)

Mr. Johnston: I have a stipulation with Mr. Corinblit, if the court will be so good as to honor it, that if I desire or Mr. Corinblit desires, the originals may be withdrawn and photostats substituted.

The Court: The originals may be withdrawn and photostats may be substituted.

Mr. Johnston: Thank you.

Q. Now, in the group of documents that we have been going through this morning and this after-

(Testimony of Bert Pirosh.)

noon, Mr. Pirosh, in addition to the ones I specifically asked you about, there are in that group of documents which has just been received in evidence, a number of letters in which you state [845] in substance and effect that you do not desire to submit a bid on a particular picture.

What was the reason, Mr. Pirosh, that you advised the particular distributor in question as to that?

A. Well, there could have been at least two reasons.

I would not wish to make an offer on a picture which was a bad picture and which we felt we would lose money if we played it. Or it is possible that a number of them were because the theatres, all of our theatres, were already booked on the date on which the picture being offered was available, and if we already were booked we could not use the picture on its availability date.

Therefore, there would be no object in trying to buy it.

Q. Now, I wanted to ask you another question with reference to this group of letters we have been talking about, this group of documents, and that is that you did not receive the award of every picture that you submitted a bid on, isn't that right?

A. By no means.

A great many of the pictures we did not get.

Q. And is it your belief that those pictures went to some other exhibitor in the area?

Mr. Corinblit: Just a minute, your Honor. The question of belief, I think is immaterial.

(Testimony of Bert Pirosh.)

The Court: All right. Do you know where the pictures [846] went when you didn't get the bid?

The Witness: I knew at the time, yes, sir.

Q. (By Mr. Johnston): They went to other theatres in the Inglewood area, is that right?

A. Yes, sir. They were awarded by the distributor to another bidder, another theatre.

Q. And you were advised in some instances, were you, that the reason for that was because this other exhibitor had, or other theatre had submitted a better bid in the mind of the distributor than you had, is that right?

A. Well, I was advised in each instance that the picture had been awarded to one of the other theatres who was bidding and I assumed that it was because the distributor was of the belief that the other offer was better than the one I had made.

Mr. Corinblit: Your Honor, I move to strike the answer beginning with the word "I assumed," as a conclusion of the witness.

The Court: It may go out.

Q. (By Mr. Johnston): Now, Mr. Pirosh, earlier today we were talking about Warner Bros. and the method they had of licensing pictures in the Inglewood-Westchester area, which I believe you testified as different than that of some of the other distributors in that Warner Bros. did not have formal competitive bidding during the year '50 and '51, [847] is that right? A. That is right.

Q. Now, I am going to ask to have these marked——

(Testimony of Bert Pirosh.)

(Handing document to Mr. Corinblit.)

Mr. Johnston: I am going to offer in evidence a situation sheet or report for Warner Bros. for the season 1950 and one for the same company for the season 1951 as the defendants' next two exhibits in order.

Mr. Mitchell: These are not Warner Bros.' records.

Mr. Johnston: No, these are Fox West Coast records.

The Court: They may be received.

Mr. Corinblit: No objection.

The Clerk: Defendant Fox's Exhibits N and O in evidence.

(The exhibits referred to were marked Defendant Fox's Exhibits N and O, and received in evidence.)

Q. (By Mr. Johnston): I am going to show you, Mr. Pirosh, what have been marked—first, let us look at Exhibit N, which is what is called a situation report or sheet, is it not? A. Yes, sir.

Q. It is a record maintained by your company, Fox West Coast, is it? A. Yes, sir.

Q. And that record shows what?

A. Well, this particular one shows the performance of [848] the Warner pictures in our Inglewood theatres in the year 1950.

It shows the——

Q. It shows the pictures played, does it not, first of all?

A. Yes, and shows the title of the picture.

(Testimony of Bert Pirosh.)

Q. The date and it shows the picture played?

A. Yes, and the theatre and it shows the daily gross and weekly gross.

It shows the film rental paid and it shows the second feature and the film rental paid for the second picture; the cost of shorts and news and a profit and loss figure. [849]

Q. I am going to ask you to look at the two exhibits which have been marked N and O, if you will, Mr. Pirosh, and simply read off the title of the picture and the date it played on the 7 day availability in Inglewood.

The Court: And where it played. Don't you want the theatre it played in?

Q. (By Mr. Johnston): The theatre it played in and the date. These are all Warner Bros. pictures, are they not?

A. Yes, sir. The Flame and the Arrow played in the Academy in Inglewood August 16 to 22, 1950.

Daughter of Rosie O'Grady played in the Academy Theatre in Inglewood April 28, 1950, to May 6, 1950, nine days.

The Damned Don't Cry played in the Academy Theatre, opening May 29, 1950, for seven days.

Mr. Corinblit: What was the date of that again, please?

The Witness: Opened May 29, 1950, for seven days.

Colt .45 played in the Academy Theatre in Inglewood on the 7 day availability for seven days, June 18 to 24, 1950.

(Testimony of Bert Pirosh.)

Three Secrets played in the Academy Theatre, Inglewood, for 7 days, October 18 to 24, 1950.

Rocky Mountain played in the Academy Theatre in Inglewood for six days, November 1 to 6, 1950.

The Glass Menagerie played in the Academy Theatre [850] for seven days, November 15 to 21, 1950.

Breakthrough played in the Academy Theatre for seven days opening November 29, 1950—that would have been through December 5, 1950.

The West Point Story played in the Academy for 11 days, opening December 20, 1950, and closing its run December 30, 1950.

Lady Takes a Sailor played in the Academy Theatre for seven days, opening February 24, 1950. That would be through March 2nd.

Stage Fright played in the Academy Theatre for six days, April 15 to 20, 1950.

The Breaking Point played in the Fox Theatre, Inglewood, for eight days, October 4 to 11, 1950.

Highway 301 played in the Academy Theatre for 7 days, December 31, 1950, through January 6, 1951.

Q. Have you finished the situation sheet for 1950? A. Yes, sir.

Q. Will you turn then to Exhibit O and give the title of the Warner Bros. picture and the date it played on a 7 day availability in a Fox house in the Inglewood area.

A. All right. All we have on the sheet are the pictures that played in our theatres, in the Fox theatres.

Q. I understand that.

(Testimony of Bert Pirosh.)

A. Storm Warning played in the Academy Theatre 7 days, [851] February 14 to 20, 1951.

Strangers on a Train played in the Academy Theatre for 7 days, July 25, through 31, 1951.

Fort Worth played in the Fifth Avenue Theatre for 8 days, July 31, 1951, through August 7, 1951.

On Moonlight Bay played in the Academy Theatre for 7 days, August 15 to 21, 1951.

Captain Hornblower—I think the title was Captain Horatio Hornblower—played in the Academy Theatre for 12 days, opening September 2, 1951, through September 13, 1951.

Jim Thorpe played in the Academy Theatre for seven days, September 21 to 27, 1951.

Force of Arms played in the Fifth Avenue Theatre for nine days, October 3 through October 12, 1951.

Painting the Clouds played in the Academy Theatre for 7 days, October 17 to 23rd.

Q. You don't need to read anything after September 1951. If you have read all up to that date, that's all you need to read at this time.

A. All right. That's all there are for that date.

Mr. Johnston: I have no further questions, your Honor. [852]

Cross Examination

Q. (By Mr. Mitchell): Now, Mr. Pirosh, are you familiar with the manner in which the various distributors licensed their 7 day run or runs in the Inglewood area in 1950 and 1951?

(Testimony of Bert Pirosh.)

A. Yes. I was familiar with it.

Q. For instance, we have had testimony here about Loew's, that it licensed one 7 day run on a bid amongst the La Tijera, Fox Inglewood, United Artists, Academy, Fifth Avenue, and after the Paradise came into existence, the Paradise. Is that in accordance with your recollection? A. Yes, sir.

Q. Now, let's take Paramount. Will you explain to the jury how many 7 day runs Paramount offered in that area and how it went about selecting the theatres in which they would run?

Mr. Corinblit: Now, just a minute, your Honor. I object to the question insofar as it asks how Paramount made the selection of the theatres to be played as being without foundation. Mr. Pirosh would know Fox's point of view, but certainly not Paramount's.

Mr. Mitchell: He knows what went on in Inglewood, your Honor. He was an active bidder.

Mr. Corinblit: What went on is one thing, but what went on at Paramount is another thing. [853]

The Court: Read the question.

(Question read.)

The Court: Overruled, if you know.

The Witness: Yes, sir. Paramount did a lot of experimentation——

The Court: No, that is not the question. Answer the question. How many runs did Paramount authorize.

Mr. Mitchell: What he wants you to say is how

(Testimony of Bert Pirosh.)

they did it first, and how they did it second, if there was more than one way.

The Witness: Paramount for a considerable period, for some time during this period, drew an imaginary line through the Westchester-Inglewood competitive area and offered to license two runs on the 7 day availability, and they said that the theatres which were east of the imaginary line could bid for a run and the theatres that were west of this line could bid for a run. [854]

Q. So that there would be two 7-day runs in the Inglewood-Westchester area playing day and date?

A. That is correct.

The Court: Irrespective of competition?

The Witness: That is what Paramount tried to do.

Q. (By Mr. Mitchell): Was this by bidding in these respective areas with the imaginary line dividing them?

A. Yes, it was by bidding.

Q. All right. Now, we have two—we have Paramount offering two 7-day runs in the area to play day and date.

Now, which theatres did Paramount allow to bid for one of the runs?

A. Well, one of the runs was between the La Tijera Theatre, the Paradise Theatre, the Fox Theatre, the United Artists Theatre and possibly the Ritz Theatre was being offered a chance to bid.

Q. The Ritz was a small theatre in Inglewood?

A. Small, insignificant theatre.

For the other run Paramount was bidding among

(Testimony of Bert Pirosh.)

the Southside Theatre, Academy, the Fifth Avenue and I believe at one time *for* the Rio Theatre was bidding.

Q. All right. Just so we can understand what Paramount was doing down there, they offered these two day and date runs on a bid and suppose the Academy bids the highest in its area, it gets the run? [855] A. Yes.

Q. All right. Now, suppose the Paradise bids the highest in its area?

A. According to Paramount they would license the Academy and the Paradise to play day and date.

Q. Were you willing to play day and date in that manner? A. No.

Q. You wouldn't buy the picture?

A. I didn't want to buy the pictures because we considered the Paradise Theatre and the La Tijera Theatre and the United Artists and Fox in downtown Inglewood were competitive to the Academy Theatre.

Q. Let us take somebody like the Southside. Supposing in this western area which you say consisted of the Academy and the Rio and the Imperial and the Southside, suppose the Southside were the highest bidder under the Paramount plan and then suppose in its area that the Paradise was the highest bidder, would it be able to play day and date with the Southside? A. Yes, sir.

Q. All right. Now, that went on for a while?

A. That is right.

Q. Is that what you call experimenting?

(Testimony of Bert Pirosh.)

A. Yes, sir, it certainly was experimenting. [856]

Q. All right. Did Paramount do some more experimenting? A. Yes, sir.

Q. What did they do next?

A. Well, they developed——

Q. This was all in 1950 and 1951?

A. Yes, sir.

Q. All right.

A. They developed what they called a circle plan whereby they drew a circle around each theatre and in that circle were included theatres that Paramount said were in substantial competition to that particular theatre.

They had a series of circles which intersected one and another. The highest bidder in the entire area, in the Westchester-Inglewood area was awarded the picture.

They were offering two runs to be played on a day and date exhibition. If the second highest bid was not in the same competitive area that Paramount had laid down as the highest bid, those two theatres were offered the picture.

Q. All right. Now, that abstractly may sound complex, but I think if we get down to talking about theatres, it becomes not too complex.

Suppose the Southside Theatre were to offer the highest bid in the entire Inglewood-Westchester area to Paramount? A. Yes, sir. [857]

Q. That theatre would get the bid?

A. That is right.

Q. All right. Now, what over on the western

(Testimony of Bert Pirosh.)

side — Southside is on the eastern side of the Inglewood-Westchester area?

A. That is right.

Q. All right. Now, a way over on the western side is the Paradise. Supposing the Paradise had put in the second highest bid under the Paramount plan?

A. He would get the picture.

Q. So then the Paradise would play day and date with the Southside?

A. Yes, sir.

Q. All right. Now, under this same Paramount plan, supposing the Academy were to make the highest bid in the eastern part of the Inglewood-Westchester area and supposing you were willing to waive the clearance which you thought you ought to have, then if the Paradise made the second highest bid, could it play the picture?

A. Yes, sir.

Q. Day and date with the Academy?

A. Yes, sir.

Q. All right. Let us go on into Inglewood. Supposing the United Artists Theatre made the highest bid in this area, it would get a run? [858]

A. Yes, sir.

Q. And then there was a second day and date run and suppose the Paradise made the highest bid, second highest bid in the area, could it play day and date with the United Artists Theatre under the Paramount plan?

A. Under the Paramount plan, it could, yes, sir.

Q. All right. Now, supposing the La Tijera Theatre, some two miles distant from the Paradise,

(Testimony of Bert Pirosh.)

were to make the highest bid in the Inglewood-Westchester area, would the Paradise then play, if it made the second highest bid, could it play day and date with the La Tijera? A. No, sir.

Q. Go ahead.

A. Paramount considered the La Tijera Theatre as the only bidding theatre at this time in the entire area which could take clearance on the Paramount pictures over the Paradise Theatre and if any of the other theatres in Inglewood, the Academy or United Artists or Southside received the picture and the Paradise was the next highest bidder, the Paradise could play the picture day and date.

Q. So with respect to Paramount pictures all Mr. Schreiber had to do to play day and date with the other theatres in the Inglewood area was to put in the second highest bid except for the La Tijera?

Mr. Corinblit: Object to the question as calling for [859] a conclusion of the witness.

The Court: Objection overruled.

The Witness: That is correct.

Q. (By Mr. Mitchell): Now, how did Warner Bros. go about licensing its 7-day availability or availabilities? Before I ask you that question—let me withdraw that.

You used the word “clearance” in the Paramount plan. Was there really any clearance involved in the Paramount plan?

A. There was no clearance. There was a priority of run.

Q. I think you will have to explain that, what

(Testimony of Bert Pirosh.)

you mean by clearance as distinguished from priority of run.

A. All right. Clearance is a term used in the motion picture industry, in the theatre business, to denote the lapse of time after the completion of a run before the next run in the competitive area can play the picture.

Q. Is it an agreement with the prior exhibitor?

A. The distributor in licensing a picture says to Loew's State Theatre, tells Loew's State Theatre that if you play this picture no theatre in Inglewood, for example, can play this picture until 7 days after the completion of your run. That is where the term that you have heard "7-day availability" comes from.

Q. Now, that is what you call clearance? [860]

A. And that is clearance, the number of days—whether it is 7 days over Inglewood or 21 days before the Fairfax Theatre can play the picture or the Baldwin Theatre.

Priority of run merely means that the theatre buying the picture or licensing the prior run has the right to play the picture before the next theatre.

In Inglewood, where Paramount was licensing the 7-day availability and 14-day availability, if the La Tijera Theatre bought the 7-day availability they play it the 7 days and the day after they finish it could open in the Fox Theatre or the Paradise Theatre or any other theatre.

The La Tijera would have the prior or earlier run but would be allowed no days of clearance—blank

(Testimony of Bert Pirosh.)

days when nobody in the area was playing the picture.

Q. No lapse of time between the completion of the La Tijera run and the commencement of some other theatre playing it?

A. The La Tijera would complete the run on Tuesday night and it would open Wednesday at noon at the Fox Theatre or United Artists Theatre.

Q. Paramount was also offering two 14-day runs in the area? A. That is correct.

Q. Which would start immediately after the completion of the 7-day runs? [861]

A. Well, it would start after 7 days of the 7-day run.

Q. Don't the 7-day runs usually run 7 days?

A. Well, usually, but sometimes they were held over and in that case the 14-day availability theatres may be overlapping the run in the first theatre.

Q. The 14-day availability might be playing day and date? A. That is correct, sir.

Q. All right. Now, I would like to ask you how Warner Bros. licensed its 7-day availability or availabilities in the Inglewood-Westchester area?

A. Well, Warner Bros. throughout——

Q. This is in 1950 and '51.

A. Yes, sir. Warner Bros. throughout the period in question licensed their pictures without formal competitive bidding on a basis of negotiating competitively orally with the various exhibitors and merchandising each picture to their best advantage.

Warner Bros., if they thought that they were bet-

(Testimony of Bert Pirosh.)

ter off on a picture playing two theatres than one theatre, they would offer two runs.

Q. Day and date?

A. Day and date. If they thought that this picture was good enough so that they could get good film rental from three theatres in this area, which were reasonably far apart, [862] they would license three runs and maybe they went beyond that. I don't recall whether they went beyond or not, but I know they did have some pictures play one run and some two day and date and some pictures three day and date during this period.

Mr. Corinblit: Your Honor, I would like to move to strike the portion of the answer beginning with the words "they thought." The witness can testify as to what he knows and how he dealt with them, certainly, but not what Warner thought about the matter.

The Court: It may go out.

Mr. Mitchell: I don't know what is going out and what is left in.

Q. Let me ask the question again. What did Warner Bros. do? You may have to repeat what you have said, but what did Warner Bros. do in the Inglewood-Westchester area with respect to the 7-day availability or availabilities?

A. Warner Bros. were not negotiating by bidding competitively on the formal competitive bidding system. They were negotiating competitively among the various theatres for each picture individually and Warner Bros. would decide how many

(Testimony of Bert Pirosh.)

runs they were going to offer on an individual picture. Perhaps one run in the entire area, perhaps two runs, perhaps three runs.

They approached the various exhibitors and said that [863] such and such a picture is available on such and such a date and I am going to serve one run or two, or whatever the case might have been, and what do you want to offer for the picture.

The exhibitors would—I don't know about the other exhibitors, but my company would make an offer in the theatre in which we wanted to play the picture and sometimes we got the picture and sometimes we didn't get it. [864]

Q. All right. Now, in this same competitive area in 1950 and 1951, on the 7 day availability or availabilities, how was Universal offering its pictures?

A. Well, Universal had a little different system. Universal at that time was licensing two runs in a—a maximum of two runs in this Westchester-Inglewood competitive area. Universal would ask for competitive bids, for the highest bids, and after the bids were received by Universal, one theatre would be awarded the picture.

Universal would then negotiate with the remaining theatres in the area, in the Inglewood-Westchester area, and license another run which in their opinion would not conflict or be a minimum of conflict with the highest bidder.

They would not, for example, if the United Artists Theatre received the picture, license a run to the Fox theatre, which is only a block or so away,

(Testimony of Bert Pirosh.)

but they might try to license it to the Southside Theatre, or another theatre which they thought was a pretty good distance away.

Q. So that if Universal were to license its pictures to the Southside as the winning bidder, then the second Universal run would be available to the Paradise if it would offer the most money?

Mr. Corinblit: Just a minute, your Honor. I will object to that question because the witness doesn't know whether it would be available to the Paradise. We are discussing [865] now only what Universal does, but he cannot say what Paradise does.

Mr. Mitchell: I am not asking what Paradise does. I am asking if under the plan, could Paradise, if he offered more money, play day and date with the Southside.

The Court: Overruled.

Q. (By Mr. Mitchell): What is the fact?

A. As I understood the Universal plan, the Paradise Theatre could have played the run with the Southside if they had offered Universal enough money.

Q. What kind of pictures in terms of quality was Universal making in those days, 1950 and 1951?

A. Well, Universal was making only fair pictures at that time. They did not spend as much money on the pictures as companies like Paramount or Metro or Warner Bros. They generally didn't have as popular stars in them, Clark Gables, and so forth. Overall, their product was what I, as an exhibitor, would say was just fair product, and it was

(Testimony of Bert Pirosh.)

not topflight motion picture entertainment, or at least it didn't sell a lot of tickets compared to those released by some of the other companies.

Q. On the 7 day availability, where did you play Universal product, the top or the lower half of a double bill?

A. Well, we played a number of Universal pictures in [866] our theatres as the top pictures, frequently not because we wanted to but because it was the best that was available for us at the time after the other pictures were sold.

Q. Did you play any at the lower half of a double bill?

A. I am sure that we did, yes, sir.

Q. And Twentieth Century-Fox during this period, how did it sell its 7 day availabilities?

A. Twentieth Century-Fox during this period sold its pictures to our theatres, to the National Theatres.

Q. To their own theatres?

A. They owned the company.

Q. Now, with respect to Los Angeles first run during this period of time, Mr. Hickey has told us how Loew's pictures were generally licensed first run Los Angeles during this period of time.

How were Paramount pictures generally licensed first run during this period of time?

A. During this period of time——

Q. 1950 and 1951.

A. I think throughout the period Paramount was licensing its pictures to the Paramount Theatre

(Testimony of Bert Pirosh.)

downtown, Los Angeles, and to the Paramount Theatre in Hollywood.

Q. Who operated those theatres?

A. Well, Marco Wolff, and I think some partners, some [867] associates.

Q. The same Marco Wolff that was buying pictures for a while for the Paradise?

A. Yes, sir, the same Marco Wolff.

Q. Do you know what his arrangement was with Paramount?

A. It was a franchise arrangement. He had a franchise giving him—a franchise which Paramount had granted to his company, granting them the right to play the Paramount pictures first run in the city of Los Angeles.

Q. Under that franchise did Marco claim clearance over other theatres in the Los Angeles area?

Mr. Corinblit: Now, your Honor, we are asking the witness what someone else claimed under a franchise.

Mr. Mitchell: He knows.

Mr. Corinblit: I object to that as being without foundation and calling for a conclusion of the witness.

The Court: The question is, did Marco claim to have preference. The witness is not asked what the situation was. He is asking what Marco claimed.

Mr. Corinblit: Yes, sir.

The Court: If he knows what Marco claimed, he can answer.

(Testimony of Bert Pirosh.)

Q. (By Mr. Mitchell): Did Marco ever make the claim to you?

Mr. Corinblit: That is a perfectly proper question. [868]

The Witness: Marco had clearance.

Q. (By Mr. Mitchell): Did he ever make the claim to you? A. Yes, sir.

Q. Tell us what he claimed.

A. Marco claimed the pictures could not open in Inglewood, for example, until 7 days after the completion of their run in the Paramount Theatres downtown and in Hollywood or in any other towns surrounding Los Angeles, such as Pasadena or Glendale and the like.

I know that this is true because if we wanted to play a Paramount picture in three or four days after the closing in the Paramount Theatres, Marco's theatres, I would have to call Mr. Wolff and ask him to give me a waiver of clearance so that I could open the picture in Inglewood, say, or in Pasadena on Sunday, instead of the following Wednesday.

I knew I had to do that because I was told by the local people working for the local Paramount exchange that if I wanted to get the picture early, I would have to secure waiver of clearance from Mr. Marco Wolff.

Q. Who were the local people who told you that?

A. Mr. George Smith, Mr. Al Taylor, the booking people I talked to.

Q. This was in 1950 and 1951?

(Testimony of Bert Pirosh.)

A. Yes, sir. [869]

Q. What did they say to you in respect to this clearance?

A. They said it was in the franchise and that they could not grant a clearance break because they were prohibited from doing it by the terms of the franchise.

Q. All right. Do you know how long Paramount continued to serve pictures to Marco in the Paramount Downtown and Paramount Hollywood Theatres?

A. I think that the franchise expired some time in 1952.

Q. You were asked by Mr. Corinblit about how Paramount has played its pictures since that time, if it has played its pictures first run in Los Angeles in a number of different ways. Just tell us how Paramount has been playing its first run pictures after the franchise expired?

A. After the franchise expired Paramount decided that they would offer some——

Q. He won't let you say about what Paramount decided. There will be an objection to that. Just say what Paramount did.

A. Well, Paramount offered a number of its pictures for exhibition, for simultaneous exhibition in seven areas in and about the city of Los Angeles.

Q. On bidding?

A. Yes, sir. I was getting to that. [870]

Q. Okay. Go ahead. Excuse me.

A. They offered a run in downtown Los Angeles,

(Testimony of Bert Pirosh.)

one on Hollywood Boulevard, one in the San Gabriel Valley, including Pasadena and El Monte, and so on, one in the Westchester-Inglewood-Redondo area, one in the Huntington Park and Southwestern area, and one in the western end of greater Los Angeles, Westwood, Santa Monica, and so on.

In each of these areas when Paramount first started the plan, I can speak for our own theatres, we received a letter from Paramount asking us if we were interested in bidding for the pictures in that particular area.

Paramount continued that plan on a number of their pictures for several years, and in the course of the last year, some time within the last year, they increased the number of areas on day and date runs from seven to, I believe, 11, but more and more in the past two years, at least, Paramount has offered their pictures to one theatre for a so-called show case run. I think that more than half of the Paramount pictures which have been released in the last year have played first run Los Angeles in one theatre only, and then after the one theatre would play, they would offer it to theatres on a subsequent run availability.

Q. On these multiple runs?

A. Yes. After the first run they would go into the multiple run. [871]

Q. Now, Warners during the period 1950-1951 were licensing their first run pictures to their own theatres. I think we have had evidence of that.

A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. The Warner's Downtown, Warner's Hollywood, and the Warner's Wiltern, is that right?

A. That is right.

Q. How long did that continue, do you know?

A. I think that continued until about 1953, and I believe in 1953 they opened or put Cinerama into the Warner's Theatre in Hollywood.

Q. That has been playing ever since?

A. Yes, sir.

Q. Either that or Cinerama Holiday?

A. Yes, sir.

Q. Is that any kind of a show case run?

A. Well, I think that the Cinerama is the outstanding example of a show case run that I have ever seen in this business. Cinerama is playing, I believe, in only about 15 cities in the United States today. It has run for a year and a year and a half and as high as two years in one town, and it is not permitted, the people who own Cinerama will not sell it today after it has been running in this theatre for so long in Hollywood, to a theatre in San Diego or to a theatre in Phoenix, Arizona. They feel that they are better off—well, I better take that back.

Q. He will object to that. Just say what they did.

A. In my opinion the people who have used Cinerama have used outstanding showmanship in achieving the results that they have and I personally lay the success of the thing to the way it was handled.

Q. To what?

(Testimony of Bert Pirosh.)

A. To the way in which it has been handled.

Q. How has Warner Bros. been licensing its regular run of feature pictures since, say, 1953?

A. Well, Warner's have used several different methods of distribution on their very best pictures.

They have played pictures like Mr. Roberts and Battle Cry and currently the Moby Dick. They have played the pictures either in one theatre exclusively, a showcase run, only one theatre in the entire Metropolitan area or in three theatres.

They have played a number of their pictures, generally the inferior ones, in the so-called multiple run where it is scattered all over the county.

Q. Did Warner Bros. at some time during this period dispose of its theatre interests?

A. Yes. They have disposed of their theatre interests but I don't know when. [873]

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Q. (By Mr. Mitchell): Mr. Pirosh, yesterday you testified that after the expiration of the Paramount franchise, Paramount on first run Los Angeles established some seven runs and then played some of its pictures in that sort of a multiple run, and you said played most of its pictures on a showcase basis in a single theatre.

With respect to the period of 1952 and 1953 on Paramount [878] pictures and the period 1954 and 1955 and now, was there a difference in the caliber of Paramount pictures?

Mr. Corinblit: I object to that, your Honor.

The Court: You mean the quality?

(Testimony of Bert Pirosh.)

Mr. Mitchell: The quality.

Mr. Corinblit: I object to that, your Honor, unless we have a definition of what Mr. Mitchell is driving at by caliber or quality.

The Court: We had testimony from MGM the other day that they made the best pictures, and I presume from a quality standpoint. Overruled.

The Witness: Well, the only yardstick that I can use as to quality is the amount of business the pictures did at the box office. I would say that in the last three years, with the exception of a few recent months, Paramount pictures in 1953, 1954 and 1955 were better than the pictures they had been releasing immediately prior to that time.

Q. (By Mr. Mitchell): All right. Now, with respect to these better Paramount pictures, how had Paramount been releasing them first run?

A. The great majority of their quality pictures have been exhibited first run in the Los Angeles metropolitan area in one theatre.

Q. Can you give me some examples?

A. Yes. *Shane* played first run in the Chinese Theatre. [879]

A Place in the Sun and *Come Back Little Sheba* played, I think, in the Fine Arts Theatre.

Proud and Profane is currently playing in the Four Star Theatre.

The Hollywood Paramount Theatre is currently playing *That Certain Feeling*, a Bob Hope picture.

Their next attraction in August is *War and Peace*.

(Testimony of Bert Pirosh.)

Then Ten Commandments——

Q. Where will War and Peace play?

A. In the Hollywood Paramount Theatre.

The Ten Commandments is licensed to Warner's Beverly Theatre to open this November on an exclusive run. [880]

Q. How about the picture Rose Tattoo?

A. The Rose Tattoo played in Warners' Beverly Theatre.

Q. How about Bing Crosby's Little Boy Lost?

A. The Little Boy Lost played in the Wilshire Theatre; and, I think, Stalag 17 for which Bill Holden received an Academy award, that played in the Wilshire Theatre.

Q. Some of these others were involved in the Academy awards. What about Rose Tattoo?

A. Miss Magnani received the Academy award, Although I never knew why.

Q. How about Come Back, Little Sheba?

A. Come Back, Little Sheba was an Academy award picture.

Q. Was Place in the Sun also involved in that?

A. Place in the Sun—I think the director received the Academy award for the best direction, but I am not positive.

Q. Loew's has very recently been engaged in selling at least some of its—licensing at least some of its pictures on a multiple first run. How are the recent, 1955 and 1956, Loew's pictures in terms of quality in comparison with the past?

(Testimony of Bert Pirosh.)

A. Well, Loew's started this releasing of some of their pictures on this so-called multiple first run in May of 1955.

Since that time the three best box-office pictures they have had were *Guys and Dolls*, *I'll Cry tomorrow*, and the coming [881] *High Society* which has Bing Crosby, Frank Sinatra, and Grace Kelly.

High Society is going to open in the *Pantages Theatre* in Hollywood very soon on an exclusive run.

Incidentally, I heard Mr. Hickey say the other day how much more they spent for advertising than they received in film rental on these showcase runs, but I know for a fact that Metro received enormous film rentals on both *Guys and Dolls* and *I'll Cry Tomorrow* on their showcase runs, for, far surpassing the advertising money they spent. It was a profitable engagement for Loew's.

Q. Other than these showcase—

Mr. Corinblit: Just a minute, Mr. Mitchell. May I move to strike the answer, your Honor, the portion of the answer stating that they were profitable engagements for Loew's. No foundation laid.

The Court: It may go out.

Q. (By Mr. Mitchell): I asked you about the quality of Loew's pictures generally in the last year. You spoke of these three pictures that are being showcased. What is the quality generally of Loew's pictures?

A. The box-office performance of Loew's pic-

(Testimony of Bert Pirosh.)

tures in the last year has not been up to the standard of Metro-Goldwyn-Mayer pictures in the past.

Q. Since Twentieth Century-Fox disposed of its theatre [882] interests, which it has been stipulated was in September 1952, how has Twentieth Century-Fox licensed its first run Los Angeles?

A. They have licensed their run-of-the-mill or mediocre pictures generally to four theatres in various districts—Downtown, Hollywood, the Wilshire district and the Westchester-Inglewood district—in each district on a competitive bidding basis.

On a number of their fair pictures they have licensed one, two, and maybe three pictures on the so-called multiple run with theatres and drive-ins all over the county. [883]

Q. What do you think of the relative advantages and disadvantages of show case first run exhibition in one or two theatres as opposed to multiple runs where they play day and date in the suburban cities like Inglewood, and so on?

Mr. Corinblit: We will object to that question, your Honor.

The Court: Overruled.

The Witness: Well, I would say that that depends on the quality of the picture. When I speak of quality, again I am speaking of the box office potential. We run a business to try to make money, and motion pictures are made in the hope that the man who made the picture will make money.

With the pictures that do good business, in my

(Testimony of Bert Pirosh.)

opinion, the distributor is far better off releasing the picture in this Los Angeles metropolitan area in one theatre. There are a number of reasons why I feel that way.

First of all, there is the angle of, the commercial angle, the dollars and cents to the distributor.

Twentieth Century-Fox, for example, received over a quarter million dollars in film rental from the Chinese Theatre on *The Robe*, on one picture.

I was told by the Metro people that they received well over \$100,000 in the Four Star Theatre on *I'll Cry Tomorrow*.

I know that in the Fine Arts Theatre on a [884] picture like *Red Shoes*, a picture that was made in England, the action took place in France, a ballet picture, we paid in the neighborhood of \$150,000 film rental in the little Fine Arts Theatre on Wilshire Boulevard.

Now, as far as the value of the picture in the entire territory served out of the Los Angeles exchange area, which includes the state of Arizona and all of Southern California and part of Nevada, it has been my experience that the pictures which have been played first run in a show case generally do far better than the pictures which are thrown into 10 or 15 theatres, and are in and out in one week or two weeks. I think there are a lot of reasons for that.

First of all, with a picture like *The King and I*,

(Testimony of Bert Pirosh.)

for example, which is currently playing in the Chinese Theatre, *The King and I* will be played in the Chinese Theatre, the only theatre in Los Angeles County playing it, for—I better withdraw the County—in the metropolitan Los Angeles area playing it, for a period of eight or nine or ten or twelve weeks. Nobody knows yet because the picture is doing a magnificent business.

During all this time there will be in all the Los Angeles newspapers every day for a period of two or possibly three months a display ad telling the people that *The King and I* with stereophonic sound and made in Cinemascope and in color, is playing in the Chinese Theatre. [885]

The word of mouth angle, I think, is very important. When you go to see a motion picture, and if you like it, you don't get up the next morning, or I don't and pick up the phone and call all your friends and say, "I saw a fine picture last night," but during the course of the next three or four weeks in discussions with friends, visiting at people's homes, or at lunch with other people, if the conversation turns to motion pictures—or generally it is television first today, unfortunately, but if it turns to motion pictures and I have seen *The King and I*, I will say, "I saw a wonderful motion picture the other day, *The King and I*, and it is playing in the Chinese now, and it is fine."

You get a very deep word of mouth penetration, not only in the city of Los Angeles, but in towns

(Testimony of Bert Pirosh.)

like Pomona and Long Beach and San Diego, and even towns as remote as Phoenix and Tucson.

In the Chinese Theatre in particular, and I think this is one reason why Mr. Hickey said he prefers the Chinese, I would say 50 per cent of the people who come to visit Los Angeles from any part of the United States for the first time go to the Chinese Theatre to look at the footprints—maybe it isn't 50 per cent, but a great number of people go to look at the footprints in the lobby. This has made this theatre a famous theatre.

The people in these towns in Southern California and [886] Arizona who see the Los Angeles papers, and these Los Angeles papers get a good deal of circulation in San Bernardino and Santa Barbara, and so forth, identify any picture that plays in the Chinese Theatre, for example, or in the Egyptian or Four Star or Pantages, these are well-known theatres, as "This must be a good picture." That is the thought that the people have in mind.

The King and I, Twentieth Century-Fox are releasing very, very slowly in this territory. It hasn't yet opened in towns like Santa Barbara or Pomona or Long Beach. It won't play in a town like Long Beach until about the middle of August.

The Twentieth Century-Fox people feel that the word of mouth that is generated and the fact of the continuing impact of the ads in the newspapers and plugs on radio, will persuade the people in these cities that this is a wonderful motion picture and

(Testimony of Bert Pirosh.)

that the people will then have a desire, when the picture is presented in their local theatre, to see the picture.

If the picture goes into eight or ten or twelve or fifteen theatres and is in and out in a week, there is no longer a display ad in the newspapers.

If it is playing in a theatre, it is in the calendar ads, and you have to have pretty good eyes to read them. I need my glasses to find out what is playing in them. [887]

There is no glamor about it. The motion picture business, in my opinion, is a business that represents glamor, and we are selling glamor and escape from our hum-drum lives. A visit to a motion picture to many people is an event. They do it once a week or once every two weeks or twice a week.

Now, if a picture receives fine word of mouth, and I am talking about quality pictures and pictures that appeal to the public, it has been my experience that when it plays these surrounding towns and it has had a chance to penetrate, that it means more at the box office in Pomona or in Santa Barbara than it would if it had gone into those towns the same day it opened in Los Angeles, when there is no opportunity for word of mouth and where the people see the ads in the papers.

In the ads, there are never any bad pictures, everything is the greatest. We overdo it and know it. You never see us say, "Well, this picture isn't very good." They are all good.

(Testimony of Bert Pirosh.)

But if you have talked to four or five people who tell you this is a wonderful picture and don't miss it when it comes to your theatre close to you, you are more apt to take the word of a friend than the word of an advertising man from the motion picture company or the theatre.

The picture *Trapeze* is a good example. This is show casing on a national level. The world premiere was at [888] the Wilshire Theatre here the day before Decoration Day. The picture opened in New York the following week and it didn't play anyplace else in the United States until the last week in June.

The United Artists paid for—or Hecht-Lancaster, who produced the picture, spent about \$20,000 bringing Mr. Ed Sullivan and some of his crew and camera crews from New York to Los Angeles to film the premiere of the picture, the celebrities arriving at the theatre, and so on.

A week from the following Sunday, or the following Sunday, I forget which, Ed Sullivan's show was devoted largely to *Trapeze* with pictures of the premiere, with Burt Lancaster and Tony Curtis appearing in the show.

There again they were selling glamor, the stars coming into the Wilshire Theatre.

They spent a lot of money on the Los Angeles premiere, a good part of which did not apply only to Los Angeles. They were selling a picture nationally, for the United States. [889]

(Testimony of Bert Pirosh.)

Now, the effect was—the effect was when this picture played in Phoenix, Arizona, for example, we grossed more than \$20,000 in one week in Phoenix.

Now, that doesn't mean much to you one way or the other until I tell you that with the exception of *The Robe* this is the biggest gross we ever achieved in our theatre in Phoenix. And this was in a year when the motion picture business was supposed to be out of business. People don't go to the movies anymore, but people came to see *Trapeze* because people had been sold on the fact, "Here is a very, very fine motion picture."

Now, if that picture had opened in Los Angeles in 10 or 12 theatres I am positive Mr. Ed Sullivan would not have come to Los Angeles to film the people going into a drive-in in Inglewood or in the El Portal Theatre in North Hollywood because there would be no interest in that.

The tickets for the premiere, and this is just a side thing, were sold at \$10 and \$25. The entire amount of money received was given to charity. This was for the Variety Club Boys' Club on the east side of Los Angeles.

The theatre lost money that day. The theatre didn't receive anything. The man showed his picture to 2000 people and he received no film rental but because of the fact that the money was being donated to charity the picture—the charity angle was given space in the newspapers. People [890] read of the premiere of *Trapeze*, and it listed the

(Testimony of Bert Pirosh.)

stars present and the fact that the money was going to this boys' club.

The premiere of *The King and I* at the Chinese Theatre that was another charity premiere. Tickets sold for as high as \$50 and \$100. That money went to a hospital, all of it.

Twentieth Century-Fox got none of it. Fox West Coast Theatres got none of it, but because of the charity angle a great many stars attended the premiere. They were photographed. Their pictures were in the newspapers and in fan magazines and not only in Los Angeles but also all over the United States.

People read about *The King and I*. They saw this star and that star attending the premiere.

This thing is not only a local showcase. Generally on the big, big pictures it is a world premiere, either in New York City, which is the entertainment capital of the East, or Los Angeles and specifically Hollywood or the Wilshire area, and Hollywood, of course, is the entertainment capital of the West and largely of the world.

The distributors feel, and they say that they can back it up with money, that the showcase runs help their pictures, not only in Los Angeles—the Los Angeles Metropolitan Area—not only in Southern California but frequently all over the United States.

The *Ten Commandments* will open at Warner's Beverly [891] Theatre at least a month before it opens in a city like San Francisco.

(Testimony of Bert Pirosh.)

The picture is going to open in November in New York and in Los Angeles, Beverly Hills, and I don't think anywhere else in the United States before Christmas.

Chicago may come in earlier than Christmas. In a city like Seattle *The Ten Commandments* is not being offered for exhibition until February.

So, Paramount's theory is, as Paramount has explained it to me, they have said that they want to play Los Angeles for at least two months before the picture is offered to anyone in Seattle to play because they want the word-of-mouth and the publicity to percolate.

If *The Ten Commandments* were playing in 15 theatres in Los Angeles it would play for about two, three or four weeks. It is just another picture and it is forgotten and it has gone by the board and there is a new picture coming up.

But *The King and I* is still a live attraction.

Now, I personally think there are some other factors in this. There is, as I say, some glamor in the motion picture business.

Speaking from the standpoint of the theatre, the Chinese Theatre, for example, we have spent—my company has spent more than \$200,000 in the last three years fixing this theatre up so that it is a fine theatre. We put in all new seats. [892] Theatre seats cost all the way from \$20, \$25 to \$30 apiece and when you put in 18 or 19 hundred seats you are running into a pretty good expense.

(Testimony of Bert Pirosh.)

The entire theatre was re-carpeted. If anybody ever put carpet in their home he knows that carpeting is a pretty good item.

We spent a fantastic amount of money to install Cinemascope equipment and sound equipment in the theatre just this year. I think it was in January or February.

We spent another 11 or 12 thousand dollars in the Chinese Theatre to improve the sound.

We had the regular stereophonic sound, 3-channel sound or 4-channel sound.

We spent 11 or 12 thousand dollars to install 6-channel sound after we had bought the picture *Carousel*.

Fox had made this picture with a 6-channel high fidelity sound and if you wanted to see *Carousel* in the 6-channel high fidelity sound in the Los Angeles area, you had to go to the Chinese Theatre to see it because no other theatres in the Los Angeles Metropolitan Area have seen fit to go to the expense of providing this finer sound for their patrons.

Now, we are not philanthropists. We don't do this just so the people can hear better sound. We think that the people will see a picture with this kind of sound in the Chinese Theatre and they will say, "This is wonderful," it enhances [893] their enjoyment of the picture and they will want to come back to the Chinese Theatre to see the next picture.

This picture *The King and I* has the 6-channel

(Testimony of Bert Pirosh.)

high fidelity sound. The enjoyment of the picture is certainly enhanced by seeing it in comfortable surroundings.

Now, I think one other factor that helps these pictures in this Los Angeles Metropolitan Area is what I would call "snob appeal."

In order to spend this kind of money in the Chinese Theatre they have to make pretty good profits or else we would be pretty bad businessmen.

We pay high terms to buy the pictures that we buy in the Chinese Theatre. We pay a lot of film rental for the picture.

In order to pay these film rentals we have to charge what a lot of people think are exorbitant admission prices.

On *The King and I* at night our admission price is \$2 for general admission, and for the loges it is \$2.40.

Now, everyone knows who has lived here for more than six months, that by September you will be able to see this picture in other theatres for \$1.25 or \$1.50 and later in September or early in October the picture will be showing at theatres at \$1 admission. And unquestionably in October or November at the very latest, this picture will be showing at theatres like the Fairfax Theatre or the Westlake Theatre or the Baldwin Theatre and it will be showing at 50 cents admission. [894] And still later it will be showing in theatres at a price even cheaper than 50 cents. And it will also be

(Testimony of Bert Pirosh.)

showing at the drive-ins at a dollar admission or a 75-cent admission with children free.

Now, why do the people pay \$2 to go to the Chinese Theatre? Part of it is the people to whom the money means nothing, which doesn't include too many people.

Part of it are the people who like to tell their friends, "You know, I was out with my wife Saturday and we had a wonderful steak dinner and it cost us \$3.50." They throw that in to impress the friends and those same people today say, "I saw The King and I at the Chinese Theatre and it is a wonderful picture, but it cost us \$4.80 for two loge seats."

Now, they are trying to impress their friends that they spend that kind of money for entertainment.

They could have waited two months and seen the same picture. The only difference would be that it would not be in 6-track high fidelity sound, and they could have saved themselves \$3.80.

They wanted to impress their friends that they had seen it. A great number of people who are visitors to Los Angeles from the East are accustomed to paying these admission prices. The New York theatres get \$2 all the time, downtown New York Theatres, and for some pretty rotten pictures.

Trapeze—the admission price in the Wilshire is \$1.75. [895] The public is paying it. There is no price resistance at the Chinese Theatre.

The third week, the first four days, Friday, Sat-

(Testimony of Bert Pirosh.)

urday, Sunday and Monday more people came to the Chinese Theatre on those four days than came the Friday, Saturday, Sunday and Monday of the week before.

They paid more dollars to see this picture. So, apparently, the word-of-mouth now is starting to get around.

The second Friday, the picture's opening day, the premiere was on a Thursday. The opening day was Friday.

The second Friday more people came to the Chinese Theatre to see *The King and I* than came in on the opening day.

Now, this is very, very unusual. The third Friday more people came to the Chinese Theatre to see *The King and I* than came in on the first day of the picture. This is the 15th day against the first day.

Now, in a lot of our theatres we play day and date with 11, 12 or 20 other theatres in Los Angeles and never in my experience has a picture on the second week, on the opening day or any day, done as much as it did the first week.

Because it is not glamourized the public thinks, "Well, this is just another picture."

In my opinion for very, very many reasons a distributor is better off. Now, when *The King and I* is released in September or October for a second run after the Chinese Theatre, [896] and it is a second run, the Twentieth Century-Fox will say, "We

(Testimony of Bert Pirosh.)

invite you to bid for the picture first run Los Angeles," or the fourth run or tenth run or fifteenth run or whatever it is.

They are trying to con their customers into thinking that this is a first run picture, but it is not. It has played for two or three months at the Chinese Theatre first run Los Angeles. It is second run when it gets to the other theatres.

When this picture plays these theatres, despite the fact that the Chinese Theatre will have grossed a lot of money and paid a lot of film rental, it will in my opinion do better business than if it had opened in 10 or 15 theatres day and date because by this time the people know, they are convinced, they are sold and whether it is right or wrong, you might not like it, you might not like the picture, but whether it is right or wrong the public is convinced this is an outstanding motion picture and will want to see it and, "I am going to take my wife and the kid and we are going to see *The King and I*." [897]

The way the public came to see *I'll Cry Tomorrow* after the run in the Four Star, and this was a sordid, depressing story—I don't know if any of you people have seen it, but there was a magnificent performance in it by Susan Hayward. It was an outstanding motion picture, and the public flocked to see it, and it played more than three months in the Four Star Theatre.

I will guarantee that when it played in Inglewood or Westchester or when it played in Glendale, it

(Testimony of Bert Pirosh.)

did more than 95 per cent of the pictures and it may be much closer, I think, to 100 per cent than the pictures that opened in those towns on the so-called multiple run day and date, because the public is pretty smart in the long run, and they are pretty hard to fool. They have to be convinced that this is something I want to spend my hard earned money on.

These are some of the factors that in my opinion make the one-theatre show case run preferable to a spread run.

I heard Mr. Hickey the other day talk about two-theatre show case runs. I have a great deal of respect for Mr. Hickey's opinions. I have known him for a number of years. He is a pretty smart, hard-headed businessman. He knows his business. But in my experience, my experience has been that the pictures that are played in two theatres do not do as well in either theatre as the pictures that are show cased in the [898] one theatre.

I think Mr. Hickey, despite his constant talk about the two-theatre show case, showed that he really prefers the one theatre when he has a good picture. He didn't have too many this last year. Don't let him kid you too much. When he gets Guys and Dolls and he gets I'll Cry Tomorrow and he gets High Society, they go in one theatre.

When Warner Bros. comes up with Giant, which is a wonderful picture, coming up in the next few

(Testimony of Bert Pirosh.)

months, I am pretty sure that is going to play in one theatre.

When they had *High and Mighty* and *Battle Cry*, they played it in one theatre.

Whereas Columbia a few years ago played pictures like *From Here To Eternity* in two theatres, they seem to have learned, because *Picnic* played in one theatre and the *Eddy Duchin Story* played in one theatre, and coming up with *Solid Gold Cadillac*, with *Judy Holliday*, which Columbia says is very good, that is going to play in one theatre opening the latter part of August.

Paramount has played more than half of its pictures this last year in one theatre exclusive in Los Angeles.

Mr. Hickey was complaining that he can't get the Chinese Theatre. We own the Chinese Theatre. I will tell you one reason why Mr. Hickey can't get it is because he wants the Chinese Theatre to play day and date with a theatre [899] in downtown Los Angeles and I won't give him the Chinese Theatre on that basis, because I can't make enough money in the Chinese Theatre playing day and date with downtown Los Angeles.

The downtown Los Angeles run takes money from the Chinese Theatre and that is why we won't do it, and that is the reason Mr. Hickey kept complaining that he would love to have the Chinese Theatre.

He could have it if he would offer the picture to me at a time when I could use it.

(Testimony of Bert Pirosh.)

Q. Mr. Pirosh, do you think it was good business for the Loyola to play a day and date run with the Chinese and the Los Angeles and other theatres in 1950 and 1951?

A. Well, I think it may have been good business for the Loyola Theatre, but it was certainly bad business for the Chinese Theatre. It hurt the Chinese Theatre. In my opinion, it was bad business for Twentieth Century-Fox.

This was one of the factors that forced the Chinese to the exclusive run policy. We were playing the Chinese Theatre in 1950, 1951 and 1952 day and date with two or three other theatres. The profits in the Chinese Theatre were dwindling at a very alarming rate.

When we started operating the theatre at the end of 1952 ourselves, our first move was to try to get pictures for the Chinese Theatre on an exclusive run basis, because playing day and date with these other theatres, we couldn't charge a [900] high enough admission to get the top gross, and the theatre was being cheapened in the eyes of the public—that is a personal opinion, the cheapened part.

I tried to get the picture *Peter Pan* very early in 1953 for the Chinese Theatre exclusive. RKO wouldn't sell it to me. They sold it to two other theatres, the Hillstreet and Pantages.

In April we were successful in getting a picture from Twentieth Century-Fox, *Titanic*. We did

(Testimony of Bert Pirosh.)

pretty good business on it, much better than we had been. It was not an outstanding picture.

Then in June of that year we bought *Shane* for the Chinese Theatre. We did phenomenal grosses in the Chinese Theatre, and we paid Paramount in eight weeks 120 some odd thousand dollars film rental. We made more money in that eight weeks ourselves than the theatre had made in the previous 26 weeks.

26 weeks is a half a year. It is a long time.

Q. *Shane* was really a western?

A. *Shane* was a very fine picture.

Q. It was a western, wasn't it, in color?

A. Well, I don't classify *Shane* as a western. *Shane* is just a wonderful, wonderful picture, as far as I am concerned.

Then all the distributors started running [900a] up to see us, "Why can't we play our pictures in the Chinese Theatre?"

We had been trying to get pictures from them for the Chinese Theatre on an exclusive run before that, and they were too stupid to know that it would be good for them, but since then we have had no trouble in the Chinese Theatre.

After we started this policy and we had this kind of policy in the Wilshire Theatre, then some other people around town started to wake up. Warner Bros. decided this looked pretty good, so they started to do it.

The Hollywood Paramount Theatre decided to

(Testimony of Bert Pirosh.)

take a crack at it. It was running at 75 cents and losing a lot of money, and so he decided, "I am going to start bidding."

Q. That is Marco?

A. That is Marco Wolff. He charged \$1.80 on Guys and Dolls, and he made a lot of money on the picture, and he paid a lot of film rental to Metro-Goldwyn-Mayer.

So apparently the public will pay the admissions that you have to get. The theatre has to get these admissions in order to pay sufficient film rental for the distributor to want to sell the picture. The pictures are always available shortly afterwards at nominal admissions. However, the pictures that play in the Chinese Theatre open the day after the Chinese closes at much lower admission in several theatres, maybe four theatres, maybe 10 or 12 theatres.

So I do not think— I would not take a picture, Mr. [901] Mitchell, answering your question, for the Chinese Theatre day and date with the Loyola Theatre today. No, sir. I would demand clearance over the theatre.

Q. Now, with respect to the Inglewood area and the subsequent run theatres, you had a theatre there in 1950 and 1951 called the Inglewood.

A. Yes, sir. We still have it.

Q. You spoke about the profit ability of some of your theatres in Inglewood in your testimony, I think in response to a question asked by the court.

(Testimony of Bert Pirosh.)

What happened to the Inglewood Theatre?

A. During this period?

Q. In that period of time, yes.

A. Well, it was a sad story. The theatre had been playing, I think 28 days or 42 days after the first run theatres, the 7 day availability in Inglewood. It was a little sidestreet theatre, the kind of theatre that used to be profitable.

Two things happened. Television started to rear its ugly head and everybody in the world, it seemed to me, thought that Inglewood was a great place to build a new theatre.

We were making a lot of money in Inglewood. There were very few other theatres.

Then the Southside Theatre was built. Then the La Tijera Theatre was built. Then the Imperial Theatre was built. Then the Paradise Theatre was built. Then the Rio [902] Theatre was built. Then the Century Drive-In was built. Then the Centinela Drive-In was built.

All of these theatres, without any question, were far superior to our little Inglewood Theatre. There was really not much reason for anybody to pay money to sit in a little, antiquated theatre, and the public, having the good sense that it does, they stopped patronizing it, and instead of making money in the Inglewood Theatre, we started to lose money in the Inglewood Theatre. We have been losing money in it ever since. We would like to get rid of it. Nobody will take it off our hands. We have

(Testimony of Bert Pirosh.)

a losing theatre because all these new theatres are more attractive to the public.

I could not buy pictures for this little theatre ahead of a theatre like the Imperial, the La Tijera, the Paradise, the Century Drive-In, the Centinela, because they could afford to pay more film rental.

So the theatre on which we had been making substantial profits started losing money and has lost money ever since, merely because the public could find better places to spend their money.

Q. In 1950 and 1951, do you think that the Inglewood area was overseated or underseated?

Mr. Corinblit: Your Honor, I object to the question as calling for a conclusion of the witness.

Mr. Mitchell: That's right. [903]

The Court: We have got an expert theatre man here. If there is any expert, I think he is. Objection overruled.

The Witness: Well, I would say events have proved that in 1948 and 1949 the Inglewood area was underseated. There were not sufficient theatres in the area at that time to properly serve the public, because the Inglewood area had boomed in population, and during the war it was almost impossible to secure materials to build a new theatre.

After the war these theatres started to get built and some were built in bad locations which failed. The La Tijera, because of the competition from all of the new theatres that were built—if the La Tijera Theatre had been the only new theatre built in the

(Testimony of Bert Pirosh.)

Inglewood area. I would say it would still be in business today and making substantial profits. But it was badly located from the standpoint it was in a little backwash. There was no business community around it at the time. There were no homes immediately surrounding it.

When the Paradise Theatre was built, and the Southside Theatre was built, and the Century Drive-In and the Centinela Drive-In, the competition got too tough for a theatre that was in a bad location.

The Academy Theatre is in a very fine location, tapping the Leimert Park area in addition to Inglewood.

The Fox Theatre Inglewood is downtown in [904] Inglewood and there are a lot of people there, a lot of shops.

The United Artists Theatre is downtown.

The Southside Theatre was built in an area where there are a lot of homes, new homes, and a fairly thriving business district.

The Paradise Theatre was built in the midst of a business district that was going along pretty well, department stores were being built there or had already been built.

The La Tijera Theatre just went by the boards.

The Imperial Theatre had to close for some time for a while.

For the number of theatres that were available on this declining market, and we were on a declining market because of television, I would say that dur-

(Testimony of Bert Pirosh.)

ing a good part of 1950 and 1951, the area was over-seated.

I would say that now I think that the population growth in that area has about caught up with it, and I don't think there are too many theatres there now, except for a theatre like the Inglewood, which nobody goes to.

There is another little *there* there like the Ritz Theatre.

The Inglewood Theatre closed for a while, and then reopened, and we would run Friday, Saturday and Sunday, and then close it for a while. We just don't know what to do with it. [905]

So the theatre is obsolete. That is gone.

Q. Mr. Pirosh, during the period involved in this action, September 17, 1950, to September 17, 1951, did Fox West Coast or National have any contract or agreement with the defendants Loew's, Paramount, Warner, or Universal, other than film licensing agreements, or was it engaged in any conspiracy, combination, deal or understanding of any kind with Universal, Loew's, Paramount or Warner with respect to the licensing of pictures for first run Los Angeles or for any run in the Inglewood-Westchester area? [906]

The Court: You can answer that question "Yes" or "No."

The Witness: I will have to answer "No." I would like to expand on it, if I may.

Mr. Mitchell: That is all, your Honor.

(Testimony of Bert Pirosh.)

Redirect Examination

Q. (By Mr. Corinblit): May I have Exhibit 46—the 46-A group, 46-A-4.

Mr. Pirosh, I think this matter has been touched on in part but I want to have the matter re-stated again for the jury in the light of your testimony about the one theatre showcase matter.

You have in front of you a complete and comprehensive play-off of very single picture, other than for the defendant Paramount, that played in the Los Angeles area on first run from 1949—from 1945 through 1951, September of 1951.

It is subject to correction by counsel, but up to this point there has been no correction offered.

You have every single picture with a guess of probably you have one thousand pictures——

Mr. Mitchell: This is an argumentative speech, your Honor. He can ask a question without arguing to the jury.

Won't we have time to argue at a later date?

The Court: Well, Mr. Pirosh did a pretty good job of arguing a while ago and no objection was made. [907]

Mr. Mitchell: He is a witness and under oath but I don't believe Mr. Corinblit is either under oath or is a witness.

The Court: He is laying a foundation for the question. The objection is overruled.

Q. (By Mr. Corinblit): Now, even without looking at this exhibit, you know that during that per-

(Testimony of Bert Pirosh.)

iod from '45 to '51, 98 per cent, at least 98 per cent—certainly 95 per cent of the pictures played in this city in more than one theatre day and date. Would you say that is correct?

A. I would think that that is correct.

Q. And with respect to virtually every picture that played in a Fox theatre during that period it played more than one theatre on the first run?

A. During that period?

Q. Yes.

A. Yes, I would say that most of the pictures played in more than one theatre.

Q. Almost all of them? A. That is right.

Q. And from your observation and long experience in buying in the Los Angeles area, you know that is true with respect to pictures released by RKO—they played in more than one theatre?

A. That is right. [908]

Q. And with respect to pictures released by Paramount, they played in more than one theatre during this period? A. That is right.

Q. And with respect to pictures of Warner Bros., they played in more than one theatre?

A. That is correct.

Q. And with respect to pictures of Twentieth Century-Fox, they certainly played in more than one theatre? A. That is right.

Q. And with respect to the pictures of Columbia, they played in more than one theatre?

A. That is correct.

(Testimony of Bert Pirosh.)

Q. And with respect to the pictures of United Artists, they played in more than one theatre?

A. Yes.

Q. And with respect to Universal pictures, they played in more than one theatre, is that correct?

A. That is correct.

Q. And that was true during the entire period from 1945 to 1951?

A. Generally speaking that was true, sir.

Q. And as a matter of fact, your company, Fox West Coast, operated units of theatres on day and date first run which included anywhere from—well, you had one unit of five theatres, did you not?

A. For a while.

Q. For a while? A. Yes.

Q. For a long time you had a unit of four theatres, is that correct? A. Yes, sir.

Q. And for a long time you had a unit of three theatres, is that correct? A. Yes, sir.

Q. All right. Now, with respect to the unit of three theatres, you played all of these great pictures of Loew's, isn't that right? A. Yes, sir.

Q. And with respect to the unit of four theatres you played all these wonderful pictures of Twentieth Century-Fox, didn't you? A. Yes, sir.

Q. And with respect to the unit of four or five theatres, you played all of the pictures of Universal, didn't you? A. Our company did—I didn't.

Q. Yes, your company? A. Yes.

Q. I appreciate that. A. Yes. [910]

Q. With respect to all the wonderful pictures

(Testimony of Bert Pirosh.)

that Columbia put out, and they put out some wonderful pictures, you will have to agree——

A. Once in a while.

Q. Just once in a while? A. Yes.

Q. They played in at least two theatres?

A. I remember they played *Lost Horizon* in the Four Star Theatre. I think that was about the only good picture they had for two or three years.

Q. You think *Lost Horizon* was the only good picture they had for two or three years?

A. Two or three years. They had pretty bad product.

Q. They had a pretty bad product?

A. Yes, they did.

Q. Excepting *Lost Horizon*. Just taking for granted what you say about Columbia product, nevertheless maybe we will get into evidence the profits that Columbia and other companies earned on these pictures notwithstanding your statement they were no good. Even, as you say, they were no good, those pictures played in at least two theatres? A. Generally speaking.

Q. When those Columbia pictures played in the Fox theatres, they might play in as many as four or five theatres? A. Yes. [911]

Q. And the same thing is true with respect to RKO pictures. They always played in two theatres? A. Generally speaking.

Q. Except when playing in a Fox unit, they would play in four or five theatres?

A. That is right.

(Testimony of Bert Pirosh.)

Q. With respect to the pictures of United Artists, they regularly played in at least four theatres from 1945 on, didn't they?

A. I think they have a four-theatre unit.

Q. And when they played in the Fox unit they would play in probably, at least, three or four theatres?

A. I would think so.

Q. So, during the entire period from 1945 to 1951, all of the companies in this industry and your company and every theatre operator in this industry, operated on the theory of these first runs playing day and date, isn't that right?

A. You are talking about the Los Angeles metropolitan area?

Q. Yes.

A. Well, they were doing it but I don't think they were doing it right.

The Court: May I ask a question?

The Witness: Yes, sir. [912]

The Court: You gave us your opinion a little while ago as to the advisability of having only one theatre. Who established that policy for Fox West Coast as to multiple run or single run? Did you establish the policy or was the policy established by someone else?

The Witness: I established the policy in the Chinese Theatre. I had nothing to do with our first run theatres until September of 1952 as far as the buying or booking was concerned.

The Court: Prior to 1952 you personally didn't establish the policy?

(Testimony of Bert Pirosh.)

The Witness: I not only didn't establish the policy but I had no voice in it.

The Court: You had no voice in it?

The Witness: I used my voice but it never worked.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, in addition to this policy that existed, what would happen, Mr. Pirosh, if you were to bring into this courtroom the profits that your theatres earned playing on this multiple day and date policy? How many millions, how many hundreds of thousands and millions of dollars would the jury see if you were to bring in the profits of the theatres playing day and date?

Mr. Johnston: I object to that. It is highly argumentative and also improper.

The Court: Objection sustained. I think you can stipulate [913] that during certain times the motion picture industry has been a very profitable industry and at other times it has not been a profitable industry. I remember very well when Fox was in bankruptcy years ago.

Mr. Corinblit: I have no quarrel with that but I am talking about the multiple day and date policy that Mr. Pirosh has described.

The Court: We are not interested in the income of the theatres until we get to the question of damage, and then we are only interested in the comparison of the income of theatres in competition with the plaintiff theatre, the Paradise Theatre.

Mr. Corinblit: Yes.

(Testimony of Bert Pirosh.)

Q. Now, Mr. Pirosh, do I understand that you as a buyer and booker for Fox West Coast opposed the multiple day and date policy as the distributors set it up in this area—that is, you told them you were against it?

The Court: Mr. Corinblit, I think your question is subject to a number of interpretations. You say “as long as the distributors set it up.”

Now, that might be construed to mean that the distributors got together and agreed, but that isn’t the evidence. They did certain things. It is true that they did certain things that were parallel in many respects but as far as getting together and setting it up in a conspiracy that is a question [914] for the jury.

Mr. Corinblit: Yes.

The Court: And you are assuming something which I think the jury has to determine.

Mr. Corinblit: Yes.

The Court: Does that take care of your objection, Mr. Mitchell?

Mr. Mitchell: Excepting the distributors don’t act en masse nor does any one distributor act. You have got to talk about people and we can’t meet testimony unless we talk about people. I want a foundation laid when he talks about somebody at Warner’s or Paramount. He doesn’t talk to Warner’s or Paramount. He talks to a person and I want him to say when and where it was.

Mr. Corinblit: I didn’t hear that comment when Mr. Pirosh was making his long argument.

(Testimony of Bert Pirosh.)

Mr. Pirosh was very broad in his statements. I think this would be a good point——

The Court: Would you like to take the morning recess at this time?

Mr. Corinblit: Yes, if your Honor please.

The Court: Very well.

Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to discuss it [915] among yourselves and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now stand in recess until ten minutes after 11:00.

(Short recess.) [916]

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Pirosh, I think you testified with respect to the current practice of multiple day and date policy of the film companies as to pictures that customarily did and customarily did not play first run in a single theatre and then in a group of theatres.

With respect to the question—as a matter of fact, you have a pretty good recollection of what pictures did or did not play multiple run day and date,

(Testimony of Bert Pirosh.)

I suppose. I want to go through these in the last year.

The picture Blackboard Jungle played multiple day and date, correct? A. That is correct.

Q. Anchors Aweigh and Marauders played multiple day and date?

A. Anchors Aweigh was a re-issue.

Q. But they played multiple day and date on a re-issue first run?

A. If anybody played it, I guess it did.

Q. It played in the State, the Fox, the UA Pasadena, the Golden Gate, and seven drive-ins, is that correct? [917] A. That is so, I guess.

Q. The picture Love Me Or Leave Me played multiple run day and date, did it not?

A. That was offered because Metro thought they had a very good picture for one theatre first run showing. Unfortunately, at the time most of the theatres that Mr. Hickey considered suitable for a show case run were booked with other pictures on the date on which he wanted to open his picture.

I recall distinctly making an offer for the picture in our Vogue Theatre in Hollywood, which is a small theatre.

Metro, Mr. Hickey, rejected all the offers because he couldn't get the kind of a theatre he wanted, and decided as long as he could not get what he considered a good show case house, he then asked for offers on multiple run, that is correct.

Mr. Corinblit: Your Honor, I will move to strike the answer with respect to what Metro wanted and

(Testimony of Bert Pirosh.)

what Metro decided. I ask now, your Honor, that the witness try to testify as to the facts.

The Court: It may go out.

Q. (By Mr. Corinblit): Mr. Pirosh, you made an offer for the Vogue Theatre in that situation, and Mr. Hickey rejected it, is that correct?

A. For the one-theatre showing, that is correct.

Q. And thereafter it played multiple day and date, correct? [918] A. That's right.

Q. The picture Cobweb played multiple run day and date, correct? A. I believe it did.

Q. The picture Scarlet Coat and Wizard of Oz, which were probably re-issues, played day and date?

A. Well, Scarlet Coat was a new picture, but no good, and the Wizard of Oz was a re-issue, and they played multiple run day and date.

Q. It's Always Fair Weather played multiple day and date? A. Yes, it did.

Q. Bar Sinister and King's Thief played multiple day and date?

A. I think they played together. They were a couple of lousy ones.

Q. On multiple day and date? A. Yes, sir.

Q. The picture Trial played multiple day and date? A. Yes, it did.

Q. The picture Quentin Durward played multiple day and date? A. Yes, sir.

Q. The picture Tender Trap played multiple day and date? [919] A. Yes, sir.

Q. The double bill Honky Tonk and Billy The Kid played multiple run day and date?

(Testimony of Bert Pirosh.)

A. They were re-issues. They played multiple day and date.

Q. The picture 30 Seconds Over Tokyo and A Guy Named Joe were also re-issues and played multiple run day and date? A. I guess they did.

Q. Kismet played multiple run day and date?

A. Yes, sir.

Q. Kismet was a great motion picture, or wasn't it very good?

A. A very expensive motion picture that nobody wanted to see, and Metro—I was told Metro lost a lot of money on it.

Q. But it was an expensive picture and they played it multiple day and date, right?

A. Yes, they did.

Q. The picture Diane also played multiple day and date? A. I suppose it did.

Q. All right. The picture Ransom played multiple day and date? A. Yes, sir.

Q. The picture Forever Darling played multiple day and date? [920] A. Yes.

Q. The picture Last Hunt played multiple day and date? A. Yes, sir.

Q. The re-issue group Northwest Passage and Stratton Story played multiple day and date?

A. Yes, sir.

Q. The picture Forbidden Planet played multiple day and date? A. Yes.

Q. The picture The Swan, that is the one with Grace Kelly, and the picture with Alec Guinness played multiple day and date?

(Testimony of Bert Pirosh.)

A. And also a picture that did no business, but it played multiple, yes, sir.

Q. Tribute To A Bad Man played multiple day and date? A. Yes, sir.

Q. The Rack played multiple day and date?

A. And did so badly they pulled it out of release after it played, yes, sir.

Q. Bowhani Junction played multiple day and date? A. Yes, sir.

Q. The picture The Catered Affair played multiple day and date? A. Yes, sir.

Q. Well, I was going to add them up, but I think we [921] can do that for the purpose of the record and get the number of pictures.

Now, I think you will agree with me that the Blackboard Jungle, the first picture I mentioned, opened May 11, 1955, and the last picture—well, the picture covered by this group we have gone through runs to July 18, 1956, after this case opened, when the picture Catered Affair opened multiple day and date. Now—

Mr. Johnston: They were all in that period?

Mr. Corinblit: Yes, all in that period.

The Court: May I inquire, you are in 1955 and 1956, and we are concerned with the period of September, 1950 to September, 1951.

Mr. Corinblit: I realize that, your Honor, but Mr. Pirosh under the questioning of Mr. Mitchell explained elaborately, he took the position that now—we showed, of course, that there had been a change to multiple day and date policy, but Mr.

(Testimony of Bert Pirosh.)

Pirosh left the inference that there were only a few pictures involved in the multiple day and date, and the only purpose of this testimony is to show that presently a great majority of the pictures are playing multiple day and date as contrasted to the inference attempted to be left by Mr. Pirosh that there were only a few. That is the only reason.

The Court: If I understood Mr. Pirosh's testimony correctly, he stated that it was only the exceptional [922] picture in which they played in one theatre, the exceptional picture. The other pictures, why, they continued to play day and date. That is my understanding.

Is that true?

The Witness: Yes, sir. I said that the junk played in these units normally and most of the good pictures played in the one theatre.

The Court: The pictures that counsel has been reading, are they junk?

The Witness: They have three good pictures, Blackboard Jungle, Love Me Or Leave Me, on which they were unsuccessful in securing the kind of theatre they wanted for an exclusive run, and The Tender Trap. The rest of them were all no good. They have had a bad year, your Honor.

The Court: I don't think you are going to be very popular with the producers.

The Witness: Well, I am not very popular with Mr. Hickey. I told him that.

Mr. Corinblit: Now, you see, your Honor, it is in the light of that testimony that I think we ought

(Testimony of Bert Pirosh.)

to have, although it will not take very long to cover as a unit, because when we are all through, you will see Mr. Pirosh is calling everything junk that doesn't play in a single theatre, and if it plays multiple day and date, he calls it junk.

The Court: That is up to the jury to decide what Mr. [923] Pirosh testified to. They heard this testimony.

Mr. Corinblit: Yes, sir, but I would like to complete this and demonstrate it in terms of a reply to Mr. Pirosh's statement.

The Court: All right. Proceed.

Mr. Corinblit: Thank you, sir.

Q. Now, turning to the releases by the distributor Universal beginning in June, 1955, the picture *This Island Earth* played multiple day and date.

A. Yes, sir.

Q. *Ain't Misbehaving* and *Man From Bitter Ridge* played multiple day and date?

A. Yes, sir.

Q. *Fox Fire* played multiple day and date?

A. Yes, sir.

Q. *One Desire* and *Purple Mask* played multiple day and date? A. Yes, sir.

Q. *Francis In The Navy* played multiple day and date? A. Yes, sir.

Q. The *Francis* series, have they been pretty profitable?

A. They have been awfully bad in Los Angeles for three or four years. They do pretty good busi-

(Testimony of Bert Pirosh.)

ness in the Middle West where they don't know any better. [924]

The Court: Maybe they just understand a mule better in the Middle West.

The Witness: They like corn pictures. Ma And Pa Kettle and Francis are very good there but are not popular here.

Q. (By Mr. Corinblit): The people in the Middle West don't understand anything about the movies?

A. They like a different type of picture than are liked in a metropolitan area like Los Angeles. There is no reflection on the people in the Middle West.

Q. I think there is an awful reflection on the people in the Middle West, Mr. Pirosh.

The Court: Let's not argue this question. The jury is not asked to decide that question.

Q. (By Mr. Corinblit): The picture Kiss of Fire played multiple day and date?

A. Yes, sir.

Q. The picture Female On The Beach played multiple day and date? A. Yes, sir.

Q. To Hell and Back played multiple day and date? A. Yes, sir.

Q. The combination Lady Godiva and Naked Dawn played multiple day and date?

A. Yes, sir. [925]

Q. The picture Tarantula and Running Wild played multiple day and date? A. Yes, sir.

Q. The picture The Spoilers played multiple

(Testimony of Bert Pirosh.)

day and date? A. Yes, sir.

Q. The picture Square Jungle played multiple date and date? A. Yes, sir.

Q. Second Greatest Sex played multiple day and date? A. Yes, sir.

Q. There Is Always Tomorrow played multiple day and date? A. Yes, sir.

Q. All That Heaven Allows and Red Sundown played multiple day and date?

A. All That Heaven Allows?

Q. Yes, sir.

A. I think that played in the Wilshire Theatre.

Q. Well, we will check that. My record shows——

A. I am not positive of that fact. I know we did play a Universal picture in the Wilshire Theatre. [926]

Q. Now, the picture Benny Goodman Story played multiple day and date? A. Yes, sir.

Q. You don't really regard that as a bad picture, do you?

A. It did not do top business. It was a pretty good picture.

The Court: When you catalog a picture as being bad or good you are only looking at it from the boxoffice receipt angle, isn't that right? That is, if it brings in a lot of money it is a good picture and if it doesn't bring in a lot of money it is a bad picture?

The Witness: That is correct.

The Court: You are not passing on the quality

(Testimony of Bert Pirosh.)

of the picture from an artistic standpoint but you are passing on the quality of the picture from a monetary standpoint?

The Witness: I am strictly commercial.

Q. (By Mr. Corinblit): The picture *To Hell and Back* was a big grosser, was it not?

A. Very, very good.

Q. Very good? A. Yes.

Q. And that picture played multiple day and date?

A. Universal decided to do that. I tried to buy that picture on exclusive run and made an offer for it. [927]

Q. And Universal decided they didn't want it?

A. Universal, I think, made a mistake.

Q. But it did a great business?

A. Yes, a fine picture.

Q. All right. The picture *Creature Walks Among Us* and *Price of Fear* played multiple day and date?

The Court: Mr. Corinblit, you are talking so fast that I have trouble even knowing what you say. I don't know how the reporter can get this down. I don't think that the reporter can get it at all.

Q. (By Mr. Corinblit): *Creature Walks Among Us* and *Price of Fear*; *Never Say Goodby*, *World In My Corner* played multiple day and date, isn't that right, Mr. Pirosh?

A. I believe it did.

Q. *Toy Tiger* and *Rawhide Years* played multi-

(Testimony of Bert Pirosh.)

ple day and date? A. Yes, sir.

Q. And Away All Boats played multiple day and date? A. Yes, sir.

Q. Have you found out how the Away All Boats is doing?

A. I think yesterday at the opening—I heard the matinees yesterday were good. [928]

Mr. Corinblit: Now, the period covered by that group is roughly the same as indicated before, just in a period of a little over one year—June, 1955 to July of 1956.

Mr. Corinblit: It may be, your Honor, in order—I don't want to take the time but if I may submit to counsel for the opposition a proposed stipulation with respect to the remaining figures, then we can put them in in terms of the number of pictures in the last year that played multiple day and date as distinguished from the number of pictures that played on single run.

May I do that, your Honor?

The Court: You may see if you can get such a stipulation from the parties.

Mr. Johnston: Will we be able to enter into a stipulation as to the quality of the pictures?

Mr. Corinblit: No, I don't think so.

Mr. Johnston: I didn't think you would.

Mr. Corinblit: Can you stipulate as to the numbers?

Mr. Johnston: I think there should be some testimony as to whether they are good, bad or indifferent pictures.

(Testimony of Bert Pirosh.)

The Court: Proceed.

Mr. Corinblit: Thank you, sir.

Q. The Columbia pictures, Mr. Pirosh, during the last five years *Five Against The House* and *End of The Affair* played multiple day and date, is that correct? [929]

A. I suppose they did.

Q. *Prize of Gold* and *Chicago Syndicate* played day and date—played multiple day and date, is that correct?

A. I suppose they did.

Q. *Came From Beneath The Sea* and *Creature With The Atom Brain* played multiple day and date?

A. I think so.

Q. *Man From Laramie* and *Bring Your Smile Along* played multiple day and date?

A. Yes.

Q. Who was the star in that picture?

A. It was a good picture and did a lot of business. *Jimmy Stewart*.

Q. *Footsteps In The Fog* and *Gun That Won The West* played multiple day and date?

A. Yes.

Q. *Teenage Crime Wave* and *Apache Ambush* played multiple day and date?

A. Yes.

Q. *My Sister Eileen* and *Dual On The Mississippi* played multiple day and date, or was that a re-issue?

A. That was a brand new picture. That didn't do any business.

Q. And the picture *My Sister Eileen* was brought from a stage play, is that right? [930]

A. I don't know where they got it from but it didn't do any business.

(Testimony of Bert Pirosh.)

Q. All right. Count Three And Pray played multiple day and date? A. I suppose so.

Q. 3 Stripes In The Sun played multiple day and date? A. Yes, sir.

Q. Queen Bee and The Crooked Web played multiple day and date? A. Yes, sir.

Q. Lawless Street played multiple day and date? A. Yes, sir.

Q. Last Frontier and Inside Detroit played multiple day and date? A. Yes, sir.

Q. This Is Joe Macbeth and Fury At Gunsight Pass played multiple day and date? A. Yes.

Q. Battle Stations and Houston Story played multiple day and date? A. Yes.

Q. Hot Blood and Uranium Boom played multiple day and date? A. Yes.

Q. Rock Around The Clock and Overexposed played multiple [931] day and date?

A. Yes, sir.

Q. The picture Jubal played multiple day and date, did it not? A. Yes, sir.

Q. Who was in Jubal?

A. Jubal had Ernest Borgnine and Glenn Ford and one other, Rod Steiger and it fell flat on its face. It didn't do any business.

Q. Cockleshell Hero and Blackjack Ketchum played multiple day and date? A. I believe so.

Q. And the picture The Harder They Fall played multiple day and date? A. Yes, sir.

Q. Earth Versus Flying Saucers and The Werewolf played multiple day and date? A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. Safari and Storm Over The Nile played multiple day and date? A. Yes, sir.

Q. All right. The period covered by that is from June, 1955 to August, 1956?

A. One good picture.

Mr. Johnston: What did he say? [932]

(Answer read.)

Q. (By Mr. Corinblit): Now, turning to the Paramount Company, the picture Mambo played multiple day and date? A. Yes, sir.

Q. The picture Hell's Island played multiple day and date? A. I suppose it did.

Q. And the picture Girl Rush played multiple day and date? A. Yes, sir.

Q. And the picture Ulysses—that was the picture with Kirk Douglas—played multiple day and date? A. Yes, a big flop.

Q. Lucy Gallant played multiple day and date? A. Yes, sir.

Q. And Hell's Horizons played multiple day and date? A. Yes, sir.

Q. House of Bamboo and That Lady played day and date, multiple day and date?

A. Are you reading the Paramount product?

Q. Yes. A. That is Fox.

Q. Pardon me, that is Fox. Now, I think it is also correct to state that 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 Paramount pictures that did play in a first run—that is [933] in a pre-release run prior to release to the multiple day and date—

(Testimony of Bert Pirosh.)

Mr. Mitchell: That is a big statement by counsel. If he wants to ask the witness about pre-release runs he might do so.

The Court: You are talking about "pre-release runs." This witness has never said that. The witness has never said that the exhibition of pictures at the Chinese Theatre, a single run theatre, was a pre-release picture. He never called it a pre-release.

Mr. Corinblit: Yes.

The Court: He calls it first run.

Mr. Corinblit: All right, your Honor. I will go into that matter for a minute.

Q. Mr. Pirosh, as far as the distributors are concerned, when they send you a letter——

Mr. Mitchell: Mr. Pirosh, don't answer the question until I object.

Q. (By Mr. Corinblit): When the distributor——when you receive a letter from a distributor with respect to a picture that has first played in this so-called exclusive theatre and then goes into a multiple day and date theatre, does the distributor in his letter to you, does any distributor in their letters to you call that release, that multiple day and date release, a first run? [934]

Mr. Mitchell: I object to it on the ground it is not the best evidence. If we are going to go into letters, let us bring the letters out.

The Court: The witness testified a moment ago the distributors called it first run but he didn't call it first run. The first run was in the single theatre.

(Testimony of Bert Pirosh.)

He testified to that. The objection is overruled, but I will sustain an objection on the ground it has already been asked and answered.

Mr. Corinblit: All right, your Honor.

Q. Now, if the distributor refers, Mr. Pirosh, to the multiple day and date run as the first run, what does the distributor call the run before that?

Mr. Mitchell: I object to it upon the ground it is too generalized. I can't meet testimony about the distributor as if it were one person. [935]

The Court: I am going to sustain the objection. This expert witness is a buyer and he is not an expert distributor. He doesn't know what the distributors do except from hearsay.

Mr. Corinblit: All right, your Honor. Let me put it this way:

Q. When you receive a letter from the defendant, in this case Paramount, in which there was a reference to the run, before the run they called first run, what did they call the exclusive run?

Mr. Mitchell: Object to that on the ground it is not the best evidence.

The Court: Overruled.

Mr. Mitchell: If we are going into written documents we should have them.

The Court: Objection overruled.

The Witness: I am not positive what Paramount calls them. I do believe that at times they call them pre-release even though the pictures were playing all over the county at that time, and they obviously weren't pre-releases.

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): They called them pre-releases?

A. They might call them anything.

Q. Now, it is also true, isn't it, that the other distributors, the other defendants in this case, Twentieth Century-Fox, Universal, Warner's and Loew's, when they wrote you or told you about what they called this first run, that is in [936] the single theatre, they also referred to it as a pre-release, isn't that right?

A. I don't recall those companies telling me that.

Q. You recall Paramount but you don't recall anything with respect to the other companies, is that it?

A. I recall Paramount because I have had some arguments with them about it.

Q. I see. But you don't recall the others?

A. I don't recall it, no.

Q. Now, I think you testified that the picture *The King and I*, now at the Chinese, is playing at advanced admission prices, is that right?

A. Well, we are charging a certain price for the picture.

Q. But it is more than what you would—it is more than your regular first run theatre charge?

A. More than what first run theatre?

Q. Well, you have other theatres operating on the multiple first run policy. You do have such theatres?

A. We have theatres operating multiple first

(Testimony of Bert Pirosh.)

runs and second runs and exclusive first runs and subsequent runs.

Q. I am talking about the multiple first runs. The admission price at the Chinese for The King and I is higher than the price that you are charging regularly in the multiple first run theatres? [937]

A. We have no specific multiple first run theatres.

Pictures in this entire area are offered on a bidding basis and our Vogue Theatre in Hollywood, for example, may be playing an exclusive run one week, as they did on the Metro picture Lily and they ran it for three or four months.

And they may be playing day and date with a theatre downtown another week. Just two theatres. And one week if they can't get a picture with a limited number of theatres, they might be playing with the whole mish-mash—10 or 12 theatres, and they might be all different theatres.

Q. Perhaps we can put it this way. The Chinese is charging more than the Vogue? A. Sure.

The Court: Maybe you can get a stipulation that the Chinese charges more than any other motion picture theatre in this area as a general rule. I think they do. I don't know. I haven't been in the Chinese for many years.

The Witness: That is not true.

The Court: That is not true?

The Witness: No, sir.

The Court: All right.

Mr. Corinblit: We can't get a stipulation there.

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): Now, has the Vogue Theater ever increased its price when it went to an exclusive run as against playing on this multiple day and date? [938]

A. The Vogue Theatre charges what we think we should charge on any specific picture.

Q. But on an exclusive they have gone over on what they charge for multiple day and date?

A. I think when they ran *The Bad And The Beautiful* it was a dollar and a quarter.

Q. How about the other pictures?

A. I don't think they had any other exclusive runs in the last few years. The theatre is not good enough for that.

Q. Now, when Paramount referred to this first run, this exclusive run as a pre-release, what did you understand to be the meaning of the term "pre-release?"

Mr. Johnston: Your Honor, I think he has already gone into that—what Mr. Pirosh understood it to be. He testified to that some time ago.

The Court: Let me ask Mr. Pirosh a question.

Mr. Pirosh, regardless of whether the picture plays at one, two, three or four theatres it is a first run, isn't it?

The Witness: So far as I am concerned, yes.

The Court: And anything that comes after that is a subsequent run?

The Witness: I think obviously so.

The Court: So *The King and I* playing in the Chinese Theatre now, in your opinion, is first run?

(Testimony of Bert Pirosh.)

The Witness: I know it is first run. [939]

The Court: Anything that comes after that will be a second run?

The Witness: It has to be, or third.

The Court: In your opinion?

The Witness: Yes. I think it is pretty obvious that if another theatre plays the picture after it finishes in the Chinese Theatre that that theatre is not playing the picture first run in Los Angeles County.

Q. (By Mr. Corinblit): Now, Mr. Pirosh, the distributors in their discussions with you take a contrary position, don't they?

Mr. Mitchell: Wait a minute. The distributors don't discuss en masse. I object to it on the ground no foundation has been laid. I want to know who he is talking about.

Q. (By Mr. Corinblit): Mr. Pirosh, you heard—you were buying and booking pictures for Fox from at least 1945 on and before then too, and you certainly heard the word "pre-release" during those dates, didn't you? A. I suppose I did.

Q. And Fox bought pre-releases during those dates, didn't they?

A. I still don't know what a pre-release is. If a picture is released it is released and if you play it ahead of that time it is just released earlier.

Q. I realize that, but I want to know how you did business [940] in that period. I do not want your opinion now, but how you did business during

(Testimony of Bert Pirosh.)

this period in your dealings with Loew's, for example. [941]

A. Yes.

Q. There would be—as a matter of fact, I think there might be three or four pictures a year which would be designated as pre-release or road show, isn't that right? A. I don't think so.

Q. You don't think so?

A. The only picture I can recall from Loew's that was designated as either pre-release or road show, and I don't know which they called it, if they called it either one, was during the period before 1945 and the picture was *Gone With the Wind*.

Q. Well, weren't there a group of pictures that would play, for example, at the Four Star or the Wilshire Theatre which you would refer to and Loew's would refer to as pre-release pictures, where you would raise your admission price and have a special whoopla arrangement that you referred to?

A. I don't remember—I didn't refer to them as pre-releases. Now, what Loew's referred to them as, you can find out from their records, I guess.

Q. Now, can you remember how Loew's referred to them to you?

A. They wanted to sell a picture.

Q. Did they ever refer to them as pre-releases?

A. Nobody refers to a picture as a pre-release in conversation. [942]

Q. I am asking during the period from 1945 to 1951, whether Loew's referred to these pictures I am talking about as pre-releases?

(Testimony of Bert Pirosh.)

A. I can recall no such reference.

Q. You don't recognize that during 1945-'51 there was in the motion picture industry an accepted term "pre-release" which referred to a play-off in a single theatre at advanced admission prices, or sometimes referred to them—and had reserved seats and sometimes not reserved seats at which—well, including those elements. Do you recognize the existence in the motion picture industry from 1945 to 1951 of such a term?

A. Well, if you are talking about the motion picture industry in New York, for example, any picture plays first run in one theatre. This is the only city in the United States to my knowledge where this kind of a crazy setup, crazy in my opinion, has evolved and a picture plays in San Francisco.

I don't care if Paramount calls it pre-release or post-release or first run, if it plays in one theatre in Seattle, if it plays in New York City, if it plays in San Francisco, it plays in one theatre.

I don't know what a pre-release is or after-release or anything else. I think it is just a lot of words.

Mr. Corinblit: I would just ask a final question on this point. Did Loew's use that word to you from 1945 to 1951, pre-release?

The Witness: I have already said that I do not recall that they used it.

Q. (By Mr. Corinblit): Do you recall whether any of the other distributors used that word to you from 1945 to 1951?

(Testimony of Bert Pirosh.)

A. I think I have testified I have heard Paramount use it.

Q. Any other distributor?

A. I do not recall hearing it from any other distributor.

Q. All right. Now, with respect to this matter of multiple day and date, I think you have described it, but it perhaps ought to be described a little further. What happens is that with respect to this area on the map, not in the central part of the city sometimes, but in circles all throughout the city, the pictures are offered for first run to any theatre that is willing to compete for it.

Now, Mr. Pirosh, under those circumstances, Fox in every one of these areas, wherever Fox has a theatre, has to compete with the independents that are in that area, is that right, for the picture in that area?

A. Fox normally does not license more than four theatres first run. They either license one theatre or four [944] theatres generally.

Q. All right.

A. I think they did release one or two pictures on this overall thing.

Q. All right. I want to turn now to the Fox West Coast, your company. I am talking about Fox West Coast now. Fox West Coast, your company, in each one of these areas has to compete against the other theatres for the multiple run in that area, is that right?

A. If we want to buy the picture.

(Testimony of Bert Pirosh.)

Q. If you want to buy the picture, you have got to compete for it, isn't that right?

A. Yes, sir.

Q. That is true with respect to each area in which this multiple first run is played?

A. There is no special area. Each distributor has evolved a system of its own. They determine what the areas are. In some areas they might say that in the San Fernando Valley, "We will license three runs," or they might say, "East of this street we will license one run, and west of this street we will license one run."

There are no hard and fast areas. Each distributor has its own system.

Q. Right.

A. So if you want to talk about a specific distributor, [945] I can answer the question.

Q. All right. My only point is, without having any area that any distributor designates within each such area, Fox has to compete against the other theatres in the area for the run, that is what I am driving at, and that is true, isn't it?

A. If I want to buy the picture, I have to make an offer.

Q. In competition with others in the area?

A. Depending on whether the others want to make an offer or not.

Q. Now, in 1951, as a matter of fact, from 1945 to 1951, excluding for a minute Universal, the theatres in this whole area, not a single theatre in the area, other than where a Fox theatre was located,

(Testimony of Bert Pirosh.)

had any opportunity to compete for first run pictures, did they, independent theatres?

A. Which area are you talking about?

Q. Well, you know that—well, let's talk about Loew's. Loew's prior to the fall of 1949, late 1949, was playing in three Fox theatres, the Los Angeles Downtown, the Egyptian in Hollywood and, if I am not mistaken, the Wilshire on Wilshire Boulevard. Not a single theatre in this whole area had an opportunity to license first run pictures at that time, did they?

Mr. Johnston: What whole area are you talking about? [946] Are you talking about the whole county?

Q. (By Mr. Corinblit): The Los Angeles metropolitan area, other than where those Fox theatres were located.

A. Loew's decided that they wanted to play downtown and in Hollywood—I don't know if it was in 1949 that there was the Wilshire Theatre. At one time they licensed three runs and at one time, as a matter of fact, they put in a fourth run and had to spend a lot of money on a theatre, and then took the pictures away after three months.

Q. Stop a minute, Mr. Pirosh.

Mr. Mitchell: Let him finish. Don't stop him a minute.

Mr. Corinblit: All right.

The Witness: They offered us the pictures in the Egyptian Theatre and we bought them. Whether

(Testimony of Bert Pirosh.)

they offered anybody else the pictures, I have no knowledge.

Q. (By Mr. Corinblit): You know that you never had to compete against any independent theatre in the entire metropolitan area for those pictures, isn't that correct, during the period 1945 to 1949?

A. All I know is this. We were offered these pictures in a theatre downtown, and we were offered the pictures in the Wilshire Theatre, perhaps, and we were offered the pictures in the Egyptian Theatre, and Loew's had very good pictures, and we were very glad to buy them. [947]

Loew's didn't offer me the pictures in the Academy Theatre in Inglewood to play day and date first run.

Q. We will get this clear first. During that period there was no competitive bidding for Loew's product for your theatres, is that right?

A. 1951?

Q. 1945 to the end of 1949?

A. To the best of my knowledge, there wasn't.

Q. So that before the multiple day and date, there was no competition between Fox and any other theatre for first run?

Mr. Mitchell: Now, wait a minute.

Mr. Corinblit: Just a minute, counsel.

Q. After multiple day and date, for the first run Fox was required to compete against independent theatres for first run, isn't that right?

Mr. Mitchell: Wait a minute, your Honor.

(Testimony of Bert Pirosh.)

The Court: Just a minute.

Mr. Mitchell: I object to that upon the ground that he has used the word compete in a different sense. Obviously, if there is competitive bidding, there is that kind of competition. If there is not competitive bidding, there is still competition because if Loew's likes the theatres of Fox, the Egyptian and the Loew's State or the Los Angeles, better than other theatres, those other theatres are competing, whether [948] they have actual competitive bidding or not, so we are using it in two senses. It is, therefore, an improper question.

Mr. Johnston: Your Honor, I submit it assumes facts not in evidence, and it also calls for a conclusion of this witness on matters he may or may not have any knowledge about. There is no foundation laid.

The Court: If he doesn't know, he can very easily say, "I don't know."

Mr. Mitchell: That is just what he did say, your Honor. He said he didn't know what Loew's was doing with regard to offering product.

The Court: You understand the meaning of the word compete?

The Witness: Yes. We were competing, I thought, with a lot of theatres at the time for patronage of the public.

Q. (By Mr. Corinblit): For patronage and the public? A. Patronage of the public.

Q. Not for pictures, though?

A. If you are asking me what we did——

(Testimony of Bert Pirosh.)

Q. Yes, sir.

A. We had enough pictures to run the Egyptian Theatre profitably and we didn't have to look for other pictures. If we had tried to buy Paramount pictures, we would have found out Mr. Marco Wolff had a franchise for Paramount pictures and we couldn't get the Paramount pictures first run in Los Angeles. [949]

Q. Mr. Pirosh, talking about the pictures that you had to make up this supply that you said was enough, you didn't have to compete against anybody for those pictures from 1945 to the end of 1949, did you?

A. In which theatres, sir?

Q. In the Egyptian, Loew's State and Wilshire Theatre, referring to Metro product.

A. In the Egyptian, we had a very good theatre and Metro wanted to sell us.

The Wilshire Theatre is a very fine theatre and Metro was getting a lot of film rental, and they wanted to sell us there.

In downtown Los Angeles, Metro was happy with the results in our theatres, and to my knowledge Metro was not offering the pictures to anyone else, but I don't know.

Q. To your knowledge, at that time, 1945, to the end of 1949, Metro wasn't offering those pictures to anybody else. That is a question that I believe you answered, but I just wanted to get that clear on the record.

A. I said that I don't know that they were.

Q. Now, as a matter of fact, that is true not

(Testimony of Bert Pirosh.)

only with respect to Metro, but it is also true with respect to Universal, that before the multiple day and date policy, you didn't have to compete with anybody for first-run pictures of Universal. [950]

After the multiple day and date policy, for the first time was Fox required to compete with anybody for a Universal first-run picture.

Mr. Mitchell: Your Honor, the record shows that Universal played multiple run ever since 1946. Universal has been playing its pictures in the Ritz and either the Vogue or the Guild and the Iris on the Hollywood Boulevard, in the United Artists Downtown, the United Artists Theatre, after 1947 or so, in the Culver Theatre in Culver City, and the Studio City Theatre, so they were playing multiple run all the time.

The Court: This witness knows those facts as well as you do, doesn't he?

Mr. Mitchell: But, your Honor, he frames his question in such a way as if there had previously been a situation where Universal was not playing first run, and therefore he assumes a fact not in evidence and the question is improper in form.

The Court: Objection overruled.

The Witness: Well, let me go back to Metro for a minute.

Q. (By Mr. Corinblit): Would you just——

A. I didn't answer the question fully before. I have been thinking a little. You asked if it were not true I did not have to compete for Metro pictures at

(Testimony of Bert Pirosh.)

any time until they [951] had multiple run. That is incorrect.

Q. That was not the question, sir. It was from 1945 to the end of 1949.

A. But you also said, as I recall, that we did not have—the independent did not have a right to compete for the Metro pictures until the multiple run was put in.

Q. No, I beg your pardon, Mr. Pirosh. I asked you whether to your knowledge you ever had to compete for Metro pictures during the period from 1945 to the end of 1949, and your answer was to your knowledge you did not, is that correct?

A. That answered that question, yes, sir.

Q. All right.

A. But I think you had another gadget in there.

Q. There will be another point. Now, I want to cover the Universal question. Do you understand my Universal question? Shall I restate it?

A. You have to tell me what is a multiple run.

Q. We will put it this way.

I think Mr. Mitchell's point is in part is well taken, your Honor, and I think one correction on the question ought to be made.

Universal, prior to the end of 1951, fall of 1951, played Universal pictures in Fox Theatres, for Fox Theatres and the United Artists Theatre downtown, is that correct?

A. From 1945 to 1951? [952]

Q. From approximately 1946 to 1951.

(Testimony of Bert Pirosh.)

A. They were playing in the Hill Street and Pantages Theatres in 1945.

Q. How about 1946 on?

A. Could have been in 1946.

Q. From 1946 to 1951. All right.

A. I am not sure of the dates, but some time during this period they did.

Q. Now, after 1951, they set up, still multiple day and date, but for the first time in the other areas theatres could compete against Fox for those multiple day and date runs, isn't that right?

A. Up until 1951, these areas you are talking about, Universal, I don't believe, was offering any first run at all to independents or to Fox.

Q. Mr. Pirosh, before 1951, Fox got Universal product without competing for it on first run.

After 1951, Fox had to compete for Universal product on first run, isn't that right?

A. In certain areas.

Q. First run.

A. Well, except that Universal, as I recall it, I think in 1951 they reduced the number of their areas.

Q. Do you think they reduced them in 1951?

A. Yes. I am not sure, but I think that they reduced [953] from five theatres to three theatres for a while. Now, I am not positive.

Q. You don't think they had as many as 11 areas in 1951? A. In 1951?

Q. Yes, the fall of 1951.

A. First run Los Angeles?

(Testimony of Bert Pirosh.)

Q. Yes. A. I don't think so, sir.

Q. Now, with respect to Twentieth Century-Fox product, prior to the termination of the interest of Twentieth Century-Fox in Fox West Coast, Fox West Coast got Twentieth Century-Fox product on first run without competing against anybody for it, correct? A. That is correct. [954]

Q. After Fox terminated its interests in Twentieth Century-Fox, you had to compete against other theatres for first run, is that it?

A. Yes, sir.

Q. You don't still get that product automatically? A. I bid.

Q. Fox product.

A. First run Los Angeles.

Q. Fox licenses it?

A. It is on a bidding basis in each of the areas.

Q. Now, from your own observations, it is really true with respect to the other distributors as well as—that is, it is true with respect to Warners and it is true with respect to Paramount, the defendants in this case, and the other defendants in this case, that before—Let us talk about Paramount first.

Before what they say is the end of their franchise, there was no competition for Paramount product after the multiple day and date is set up. There is competition for Paramount product first run, is that right?

A. Well, when Paramount had their franchise, Mr. Wolff was playing the pictures downtown and in Hollywood, and when the franchise expired—

(Testimony of Bert Pirosh.)

I think I have already testified that Paramount set up seven areas and licensed their pictures on a competitive bidding basis in each of the areas. [955]

Q. Now, Mr. Pirosh—

A. Or some pictures played one theatre, and that was licensed on a competitive bidding.

Q. Mr. Mitchell did take occasion to have you testify, a Fox West Coast man to testify, about the Paramount franchise yesterday.

When did you learn of the existence of that franchise agreement?

A. Oh, I think I knew about it 15 years ago.

Q. 15 years ago? A. Or more.

Q. All right. Did you know that in 1947 Paramount took the position that that franchise was illegal, was a violation of the antitrust laws?

A. I knew they were having an argument.

Q. Did you know that that was the position that Paramount took?

A. I think I heard something about it.

Q. Now, did you know Mr. Pirosh, when that—when the legality of that franchise was litigated in this courtroom before Judge Westover, that Judge Westover told Paramount that that franchise was not exclusive? Did you know that?

A. No, sir.

Q. You didn't know that?

A. No, sir. [956]

Q. Did you know that even after Judge Westover told Paramount that that franchise was not exclusive, Paramount refused to permit the Para-

(Testimony of Bert Pirosh.)

dise Theatre or any other independent theatre to play day and date with Downtown Paramount and Hollywood Paramount?

A. All I know is the pictures continued to play.

The Court: You can answer that, "I don't know," unless you do know of your own knowledge. You can say, "I don't know."

The Witness: I don't know.

The Court: There is no disgrace in admitting you don't know.

The Witness: I recognize that.

Q. (By Mr. Corinblit): And did you know that even though Judge Westover told Paramount that that franchise was not exclusive, that Paramount appealed from Judge Westover's ruling in order to get some other court to state that Judge Westover was incorrect?

Mr. Mitchell: Well, now, your Honor, isn't that improper? I think he should be instructed not to do things like that.

Perhaps you should tell the jury what you held, your Honor, and leave the mystery out of this and that kind of argumentative statement.

The Court: I think it is argumentative as far as this [957] witness is concerned.

I don't think this jury is interested in any appeal that was taken.

Mr. Corinblit: Very well, your Honor. I will withdraw the question.

The Court: You have gotten before the jury now that Paramount contended that the franchise was

(Testimony of Bert Pirosh.)

illegal but the court held it was not illegal, and that was sustained on appeal and that is all there is to it.

Mr. Corinblit: There is the other element, your Honor. Your Honor held the franchise was not exclusive.

The Court: I don't remember that. I would have to go back and look at the opinion.

Mr. Corinblit: Yes, it is in your judgment and it is marked as an exhibit for identification by the defendants in this case—I believe in this case. I know it is marked in other cases.

Mr. Westbrook: It is so marked.

The Court: I might advise the jury that after this court makes a determination or even after you bring in a verdict, that is not final by any means.

Within a certain length of time the parties have a right to appeal, and it is not final until the last appellate court has ruled upon the matter. And if it goes to the Supreme Court there is not a final adjudication until the [958] Supreme Court acts upon it.

Assuming in this case there is a judgment either one way or the other, for the plaintiff or for the defendants, and then there is an appeal taken, the judgment isn't final. The appeal goes to the Ninth Circuit headquarters, which is in San Francisco, and it may be two years before the Ninth Circuit will pass upon the case.

Supposing the Ninth Circuit sustains the finding of the jury, then it is possible to take a writ of certiorari to the Supreme Court, and if the Supreme

(Testimony of Bert Pirosh.)

Court allows the writ to be taken, it may be two or three years before the Supreme Court gets around to deciding the case.

So, there may be a lapse here of two or three or five years between the time you make a decision and your decision is finally final.

So, all that is necessary for you to know, as far as the Partmar case is concerned, is that in that case Paramount took the position that the franchise which they had granted to Fanchon and Marco was illegal, but this court held against them. This court held that it was legal, that it was a valid franchise. And an appeal was taken, and that case went to the Supreme Court, did it not?

Mr. Johnston: Yes, your Honor.

The Court: And finally it was sustained, the ruling in the case was sustained by the Supreme Court.

Mr. Mitchell: The appeal that was sustained in the Supreme Court was taken by the other side. Everybody appealed in that case.

The Court: Nobody was satisfied with the decision so everybody appealed and finally the outcome of the case was that the decision of the lower court was sustained.

Mr. Corinblit: Your Honor, before you conclude that, I would like to hand up to you, sir, your judgment in that case, which has been marked as an exhibit for identification, in which you ruled that the franchise was not exclusive.

The Court: Let me see what we have here.

Mr. Mitchell: No ruling was made about the

(Testimony of Bert Pirosh.)

clearance problem, your Honor. Let me call your attention to that fact. You made a ruling——

The Court: Let us see what the findings were.

Mr. Mitchell: Nothing was said about the clearance other than that the clearance was valid. I think you said the clearance was valid. What its effect was you didn't rule.

Mr. Johnston: I think we should have the opinion of Judge Westover when we are talking about the judgment.

The Court: The opinion is not the judgment.

Mr. Johnston: It is a pretty good statement of principles.

Mr. Corinblit: Your Honor, this is the judgment I am [960] referring to.

The Court: May I see it?

Mr. Mitchell: You had better look at the findings, too, because that contains your statement about clearance.

Mr. Westbrook: It is on page 12.

The Court: This exhibit 13 which has been marked for identification is the judgment in the Paramount case and provides in part as follows:

"The agreement between Paramount Picture, Incorporated and Partmar Corporation guaranteed by Fanchon and Marco Incorporated, is a valid and subsisting agreement in full force and effect."

Paramount contended that the agreement was void and illegal.

"Said agreement provides for the privilege to exhibit first run at the downtown Paramount Theatre

(Testimony of Bert Pirosh.)

all Paramount pictures upon their general release.

“Such first run privilege is not, however, exclusive and any number of simultaneous first runs may be licensed to other parties to the runs concurrently therewith.”

That was the judgment entered in that case.

Mr. Mitchell: Will you read to the jury your finding with respect to clearance, which is finding 6(b)? It is on page 3 of the findings. [961]

Mr. Corinblit: I would like the opportunity of arguing the question of findings here as distinguished from the question of your judgment.

Mr. Mitchell: This is a conclusion of law, really. It is in the conclusions of law.

Mr. Corinblit: May I see it, counsel?

Mr. Mitchell: Yes.

The Court: I think it is proper to read this finding.

By the way, the Partmar case was not tried before a jury. If it had been tried before a jury I wouldn't have made findings of fact and conclusions of law and I wouldn't have signed the judgment, because this was a question of fact.

Now, in this case you are the ones who are going to determine the facts and not the court. In that case the parties had confidence in the court and the court was the one who decided the questions of fact as well as the questions of law, so at the conclusion of the case and at the conclusion of all the evidence we prepared and signed certain findings of fact and conclusions of law and the judgment was based

(Testimony of Bert Pirosh.)

upon those findings of fact and conclusions of law.

Now, there were many issues raised in the Partmar case. One of the issues was in regard to this question of clearance, which you heard about.

Conclusion of law 6(b) says: [962]

"The clearances accorded to Partmar by Paramount pursuant to said franchise agreement was reasonable and lawful."

In other words, holding again that the franchise agreement was not illegal in itself.

Mr. Corinblit: The plaintiff will take exception to the remarks of the court.

The Court: You may have an exception.

It is 12:00 o'clock and we will now take our noon recess and again you must remember the admonition of the court heretofore given. You are not to discuss this case with anyone, you are not to permit anyone to discuss it with you and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [963]

Thursday, July 19, 1956, 2:00 P. M.

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

Mr. Mitchell: Your Honor, you stated to the jury certain facts with respect to your conclusions of law and the judgment in the Partmar case. Would it be proper for you, also, to state that the conclusions of law were signed and filed on June 18, 1951, and that the judgment was entered June 19, 1951?

The Court: That is the judgment in this court?

Mr. Mitchell: That is correct, sir, in the Partmar case.

The Court: Well, I don't think there is any dispute as to that, is there?

Mr. Corinblit: No, sir. I think, just to complete the record, could we have, then, the date on which the notice of appeal was filed and the date on which the notice of appeal was withdrawn?

Mr. Mitchell: Just a minute.

Mr. Corinblit: I think you have got it here.

The Court: Notice of appeal which was filed by which party? [964]

Mr. Corinblit: Both sides.

The Court: Both sides didn't withdraw, because the case went to the Supreme Court.

Mr. Corinblit: I am just referring to the withdrawal by Paramount.

The Court: Paramount?

Mr. Corinblit: Yes, sir.

Mr. Westbrook: Your Honor, I think Mr. Corinblit refers to two notices of appeal, one of which

was filed on behalf of the Paramount Corporation in that case. The date of filing of notice of appeal by the Paramount Corporation is July 18, 1951. By stipulation, approved by your Honor, that appeal was withdrawn or dismissed on July 31, 1951.

There was, however, a notice of appeal by Partmar Corporation, the subsidiary of Fanchon & Marco, Inc., Mr. Marco Wolff's corporation, which was filed on July 16, 1951, and that appeal remained pending for some time thereafter.

Mr. Corinblit: The appeal referred to by Mr. Westbrook, the last appeal, was an appeal from the decision of your Honor dismissing the counterclaim, not any appeal from the decision of the court on the action filed by Paramount. Isn't that correct, counsel?

Mr. Mitchell: That's right.

Mr. Corinblit: All right. [965]

BERT PIROSH

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

Redirect Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Pirosh, I don't believe we completed. It will take us just a few minutes to complete the multiple day and date exhibition in Los Angeles for that same period that I referred to.

I want to turn to Fox product. The pictures House of Bamboo and That Lady played multiple day and date, correct?

(Testimony of Bert Pirosh.)

A. I think that it played at four theatres.

Q. Including a theatre in the Westchester area, the Loyola Theatre? A. Yes.

Q. And the picture *Life In The Balance* played in that same group of theatres?

A. I believe that it did. Now, let me correct that. I am not sure if it played in the same theatres.

Q. The Los Angeles, the Fox, the Uptown and the Loyola. Does that sound correct to you? If you don't remember, why——

A. If that is what it says, I guess it is, but I don't [966] know if *House of Bamboo* played in the same theatres as *Life In The Balance*.

Q. You don't remember that?

A. No, sir, I don't remember it.

Q. The picture *Deep Blue Sea* played in that group of theatres?

A. That was a second run. I think that picture played in the Wilshire Theatre first run. [967]

Q. *Deep Blue Sea*.

A. I believe it did, sir.

Q. Are you certain of that?

A. No, I am not positive.

Q. All right. The picture entitled *Bottom of The Bottle* played in a group of four theatres?

A. Yes, sir.

Q. And the picture *Man Who Never Was* played in a group of four theatres? A. Yes, sir.

Q. A picture entitled *Revolt of Mamie Stover*

(Testimony of Bert Pirosh.)

played in a group of four theatres? A. Yes, sir.

Q. And the picture *Hilda Crane* played in a group of four theatres? A. Yes, sir.

Q. *Mohawk* played in a group of 11 theatres?

A. That played in a lot of theatres.

Q. The picture *The Proud Ones* played in a group of four theatres? A. Yes, sir.

Q. And the picture *23 Paces to Baker Street* played in a group of four theatres?

A. I believe that is correct.

Q. Now, the picture the figure 6th, meaning 6th of [968] June, opened at the Chinese, didn't it?

A. It played in the Chinese Theatre first run.

Q. For how long?

A. I think for four weeks or a little longer.

Q. And then it opened in that group of four theatres?

A. And then it played second run in those theatres.

Q. Now, referring to the pictures of RKO, the picture *Rage At Dawn* played multiple day and date——

Mr. Mitchell: Is this material to this action, what RKO did first run in 1955? They are not a party to this action at all and I object upon that ground.

Mr. Corinblit: It is just part of completing the picture and a refutation of the statement made by the witness.

The Court: Objection overruled.

Q. (By Mr. Corinblit): *Rage At Dawn* played

(Testimony of Bert Pirosh.)

multiple day and date? A. I presume it did.

Q. The picture Son of Sinbad also played multiple day and date? A. Probably did.

Q. Pearl of The South Pacific also played multiple day and date? A. I imagine it did.

Q. The picture Tennessee's Partner played multiple day and date? [969]

A. I would think that it would.

Q. And the picture Texas Lady played multiple day and date? A. Probably did.

Q. The picture Slightly Scarlet played multiple day and date? A. I imagine it did.

Q. The picture Conqueror played in three theatres, right? A. Yes.

Q. The picture Glory and Cash On Delivery played multiple day and date? A. Yes, sir.

Q. The picture Bold And The Brave played multiple day and date? A. Yes, sir.

Q. Great Day In The Morning played multiple day and date? A. Yes, sir.

Q. Turning now to the pictures of the period covered—the period May 18, 1955, to July 11, 1956, and the pictures covered—the period covered by Fox is from July 13, 1955, to the 6th of June, 1956.

The pictures of United Artists, the picture Kiss Me Deadly played multiple day and date? [970]

A. Kiss Me Deadly?

Q. Yes. My record shows it played in the Los Angeles, Fox, Hollywood and Ritz. Does that refresh your recollection on that? A. It could.

Mr. Mitchell: I object to the question about

(Testimony of Bert Pirosh.)

United Artists Theatre. That company is not a party defendant in this action.

The Court: Overruled.

Mr. Mitchell: It has no place here.

Q. (By Mr. Corinblit): Kiss Me Deadly played multiple day and date? A. I imagine so.

Q. The picture Big House U.S.A. and Stranger On Horseback played multiple day and date?

A. (No answer.)

Q. It played the Iris, El Rey, Academy at Inglewood, do you remember that? A. I think it did.

Q. The picture Top of The World and Bullet For Joey played multiple day and date?

A. Probably—well, I think it played the four theatres.

Q. You don't recall?

A. I don't recall how many theatres that kind of stuff [971] played.

Q. The picture The Kentuckian played four theatres, is that correct?

A. I believe that it did.

Q. The picture Desert Sands and Fort Yuma played four theatres? A. I believe it did.

Q. The picture Gentlemen Marry Brunettes and The Naked Street played a large group of theatres, that is three conventional and eleven—well my record shows it played 14 Fox Theatres, is that right?

A. It played in a lot of theatres.

Q. I mean 14 Fox Theatres?

A. It is quite possible.

(Testimony of Bert Pirosh.)

Q. The picture *The Killer Is Loose* played in four theatres? A. I believe so.

Q. The picture *Commanche* played in four theatres? A. I think that is correct.

Q. The picture *Frontier Scout and Crime Against Joe* played in nine theatres?

A. It played in quite a few theatres.

Q. The pictures *Black Sleep* and *Creeping Unknown* played in a group of theatres multiple day and date?

A. Yes, sir, I think that played a lot of small houses. [972]

Q. A picture *A Kiss Before Dying* and *Star of India* played four theatres? A. I think so.

Q. Finally the picture of Warner Bros., the picture *Tall Man Riding* played in a group of—played multiple day and date?

A. Probably did.

Q. The picture *Pete Kelly's Blues* played multiple day and date? A. I think it did.

Q. The picture *The McConnell Story* played multiple day and date? A. Yes, sir.

Q. And the picture *Blood Alley* played multiple day and date? A. Yes, sir.

Q. And the picture *Rebel Without A Cause* played multiple day and date? A. Yes, sir.

Q. And the picture *I Died A Thousand Times* and *Illegal* played multiple day and date?

A. Yes, sir.

Q. And the picture *Sincerely Yours* played multiple day and date? A. Yes, sir. [973]

(Testimony of Bert Pirosh.)

Q. And the picture Court Martial of Billy Mitchell played multiple day and date?

A. That is right.

Q. The picture Hell On Frisco Bay and Target Zero played multiple day and date? A. Yes, sir.

Q. And the picture Lone Ranger played multiple day and date? A. Yes, it did.

Q. And the picture Miracle In The Rain played multiple day and date? A. It did.

Q. The picture Serenade played multiple day and date? A. Right.

Q. And the picture The Searchers and Our Miss Brooks played multiple day and date?

A. That is right.

Q. And the picture Animal World and Goodbye My Lady played multiple day and date?

A. Yes, sir.

Q. And finally the picture Santiago played multiple day and date? A. That is correct.

Mr. Mitchell: You didn't purport to have read—you don't purport to have read all the pictures of all these companies?

Mr. Corinblit: No, just the pictures that played multiple day and date in terms of numbers.

I will be glad and I think it appropriate to complete the list of these companies that played first at one theatre. I think I read that list with respect to Paramount.

There were 13 pictures of Fox. No picture of RKO during the period from May '55 to July '56 and one picture of United Artists from the period

(Testimony of Bert Pirosh.)

May 1955 to July 1956 and not a single picture—pardon me, with the exception of one picture, Helen of Troy, played in one theatre. But all of those other—no one theatre played multiple day and date Warners.

The Witness: Well, now——

Q. (By Mr. Corinblit): During that period.

A. Now, you have got the multiple runs down to as low as three theatres.

Q. Pardon me.

A. You have the multiple runs down as low as three theatres.

Q. Yes, sometimes three, four, seven, nine and eleven. A. Yes.

Mr. Mitchell: Your definition of a multiple run is two theatres——

Mr. Corinblit: I think we have that straightened out.

Mr. Mitchell: I think the witness was asked questions [975] about — for instance the Loew's Company playing the Egyptian and Loew's State and at that time we were talking about two being multiple run, so I am assuming anything more than one is multiple. That is the way the witness assumed it also. [976]

Q. Well, all right. I think we should get this absolutely straightened out. Every picture that I have mentioned to you, Mr. Pirosh, was played in more than two theatres? Every picture I described as multiple day and date was played in more than two theatres?

(Testimony of Bert Pirosh.)

Mr. Westbrook: May I see your list, counsel?

Mr. Corinblit: Yes, sir.

Mr. Mitchell: Does the witness know that?

Q. (By Mr. Corinblit): Do you know that, Mr. Pirosh? A. I assume it is so.

The Court: Will you keep your voice up?

The Witness: I think that is true.

Q. (By Mr. Corinblit): Now, turning for a minute, Mr. Pirosh, to a fact that you may or may not be familiar with, looking at the first run revenue received or realized by your company or, if you know, the distributors, why, you can tell about that, too, comparing the first run revenue that is realized for a single week when played by two theatres, one or two theatres on first run day and date, as compared to the first run revenue realized by a group of theatres on multiple day and date, you don't have any doubt that the amount of first run revenue in the group of theatres exceeds the amount of first run revenue when it only plays in two theatres, do you?

A. Well, this will have to call for an assumption on my part, because the same picture obviously could not have played [977] in one or two theatres and also in a group.

You are asking me if Blackboard Jungle had played in two theatres, would it have grossed as much as it did in 10 or 11 theatres?

Q. In the first week.

A. In one week?

Q. Yes.

(Testimony of Bert Pirosh.)

A. I would say obviously it wouldn't.

Q. It wouldn't. A. In the one week.

Q. Right. And similarly, if you compared it probably for two weeks, the same thing would be true, is that right?

A. I would say on a picture like Blackboard Jungle, that would be correct.

Q. Right. A. For those two weeks only.

Mr. Mitchell: What did you say?

The Witness: For those two weeks only.

Q. (By Mr. Corinblit): Now, there are a couple of other aspects of this show case matter that you discussed that I am going into. First, I think you testified you tried to get the picture Peter Pan on exclusive run, is that right? A. Yes, sir.

Q. You weren't able to get it in the Chinese on exclusive run. [978] A. That is correct.

Q. What you were asking for on that exclusive run was that you wanted to play Peter Pan in the Chinese Theatre for a long run, is that right?

A. For at least six or eight weeks.

Q. For at least six or eight weeks. The Chinese Theatre is located up here on Hollywood and Highland, right, a little off? A. West of Highland.

Q. Now, that picture appealed mostly to children, that is what it was for, is that right?

A. Peter Pan, I think, appealed to a lot of people.

Q. But it had a great appeal for children.

A. It had appeal for children, and in addition great appeal to adults.

(Testimony of Bert Pirosh.)

Q. That is correct, is it? Under the kind of policy you described as being advisable—incidentally, what happened to *Peter Pan*? Where did it play? Well, I will withdraw that question first.

Under your policy for eight weeks this picture would have played in the Grauman's Chinese only, and under your policy anybody living in the greater Los Angeles area, including families with children, would have to go to Hollywood to see *Peter Pan*, is that right?

A. That is correct, during the period that it was in [979] the Chinese Theatre.

Q. You had in mind a period, as you put it, of about eight weeks. As a matter of fact, in terms of convenience to the members of the public, this multiple day and date policy in the metropolitan area, for people who would like to see a picture when it first comes out, is far more convenient for members of the public than is the single theatre policy that you defined, isn't that correct?

A. Well, if that is correct, then I would say that perhaps 100 theatres in Los Angeles should play the picture instead of 11. Perhaps every theatre in the Inglewood-Westchester area should play the same picture and get it done with in one week.

I don't think it is correct.

Q. But in terms of convenience to the public, it is certainly more convenient to the people in the Los Angeles metropolitan area if on first run, for people who want to see a picture on first run, to have first run theatres playing it throughout the

(Testimony of Bert Pirosh.)

city than it is to have it played in a single theatre in Hollywood, isn't that correct? That is for convenience to the public, the people who live in this city.

A. I would not say so. If a picture is playing in an inferior theatre on this day and date first run in one of these areas, I don't see that the public is any better off than if the picture plays seven days later in a fine theatre [980] in the area.

Q. But you describe first run policy that you were talking about in terms not of a week, but in terms of six, eight, or 10 weeks in the Chinese Theatre, didn't you? A. That is correct, sir.

Q. All right. I am talking about when the public gets a chance with this multiple day and date policy to have within a short range, a fairly short range, some place where they can go to see that picture first run, that is much more convenient to the public than the arrangement you describe, isn't that right?

A. I don't think so. I think that the public is better off seeing a picture like Peter Pan in a theatre like the Chinese or the Pantages Theatre, than in some rat traps in one of the neighborhoods.

Mr. Corinblit: Now, may I have that list again, please?

Q. You don't think the Loyola Theatre is a rat trap, do you?

A. I think it is a nice neighborhood house.

Q. Nothing wrong with seeing a picture in that theatre?

(Testimony of Bert Pirosh.)

A. You don't see as well as if you were seeing it in the Chinese Theatre. You don't see six track stereophonic sound. You don't have as big a screen, and it is not as fine a theatre. [981]

Q. You don't think that a theatre like the United Artists in Inglewood is a rat trap, do you?

A. I think it is a fair theatre.

Q. I beg your pardon?

A. I think it is a fair theatre.

Q. As a matter of fact, all these theatres that have played day and date, multiple day and date, would at least come in your classification of a fair theatre? A. No.

Q. They wouldn't. How about the Picwood Theatre?

A. The Picwood Theatre is a good theatre, pretty good theatre.

Q. The Village Theatre?

A. It is a good theatre.

Q. The Fifth Avenue Theatre?

A. A fair theatre.

Q. Encino?

A. Fair. But there are also theatres like the Roxie Theatre in Glendale that play pictures on day and date first run. There are theatres in Downey and there are theatres scattered all around this area that are currently playing some pictures on day and date first runs that I do not consider first-class theatres.

Q. Now, Mr. Pirosh, have you ever heard the term in the motion picture business of milking a

(Testimony of Bert Pirosh.)

picture? [982] A. I have heard the term.

Q. What do you understand by the meaning of that term?

A. Well, I never agreed with the term.

Q. What did you understand that it meant?

A. Milking a picture is if a theatre plays the picture and exhausts all of the box office possibilities so that the next runs cannot do business.

Q. Have you heard described the policy that you discussed of the exclusive first run in the Chinese as being a policy which really and truly is a milking policy to prevent any other theatres from having any revenue?

A. I have not heard it so described and, as a matter of fact, I think that pictures like *Shane* and *Seven Year Itch*, that played in the Chinese Theatre for limited runs, did better business when it got into these neighborhoods than at least 90 per cent of these so-called first runs in the same theatres, so I don't think that the pictures were milked in the Chinese.

There apparently is a tremendous potential for a picture that is sold to the public and where the public's interest in the picture has been whetted.

Q. I think you used, in describing the first run show case theory, the term charity gimmick. I think you used that term with respect to the picture *Trapeze*. I wonder, are there other situations in first run, in this exclusive first run, [983] that attach the so-called charity gimmick?

A. I don't think I attached the word gimmick

(Testimony of Bert Pirosh.)

to it, and if I did, I was wrong. Yes, there have been charity premieres for the benefit of charity at a number of theatres on important pictures.

Q. Certainly not only in Fox theatres?

A. I didn't mean to give that impression.

Q. Has this ever happened, Mr. Pirosh, or did this happen during the period you were describing this exclusive show case matter, that you distinguish a premiere from the opening of a picture in a group of theatres, that is, the first day the premiere in a single theatre, and then the next day joined in by a group of theatres? Has that happened from time to time?

A. I don't consider that a show case run.

Q. You don't consider that a show case run, but it has happened that way, that pictures have been released in that way?

A. Yes, there have been some pictures where there was a premiere on Tuesday night, say, and the picture opened in two or more theatres the following day.

Q. All right. Now, in that way you get the so-called publicity of something like this Ed Sullivan matter that had to do with the picture *Trapeze*, while at the same time a multiple day and date arrangement is used, isn't that right? [984]

A. I don't think it has been used on pictures that opened in 11 or 12 theatres the next day.

Q. But more than one theatre, is that right?

A. Very, very seldom. Occasionally, yes.

Q. Now, I will turn a minute to the 1950-51

(Testimony of Bert Pirosh.)

period, and the Inglewood area, and particularly the bidding matter that you went into yesterday.

I will show you first Plaintiff's Exhibit—I beg your pardon—Fox Defendants' Exhibit B, which covers the period from August 29, 1950, to July—I beg your pardon—from July 5, 1950 to August 29, 1950, and ask you to run through this, Mr. Pirosh, and see if you find any bids in there for Warner's pictures.

A. (Witness examining Exhibit.) [985]

Mr. Mitchell: Isn't it conceded that during that time the evidence is that Warner Bros. wasn't offering its pictures on a formal bidding basis?

Q. (By Mr. Corinblit): Is that your testimony?

Mr. Johnston: I will stipulate I didn't find any bid letters to Warner Bros. in that whole group I presented to Mr. Pirosh yesterday.

Mr. Corinblit: I would like to have the witness' testimony on that.

The Witness: I stated, I believe, that so far as I can recall Warner at this time was not offering its pictures on a competitive bidding basis, and to the best of my memory were negotiating competitively.

The only thing I find in here—I find no bid letters, but I do find a confirmation of a conversation in which an offer of ours was accepted.

Q. (By Mr. Corinblit): So the testimony is, as I understand it, that during this period covered by Defendant's Fox Exhibit B, you did not license

(Testimony of Bert Pirosh.)

pictures from Warners as a result of a competitive bid?

A. To the best of my recollection, yes.

Q. Now, will you state, Mr. Pirosh—I will turn for a moment now to the—as a matter of fact, you testified that that was true, that you did not license Warner pictures as a result of a competitive bid during this entire period [986] from August, 1950 to September, 1951, is that correct?

A. I think that I testified, according to my best recollection, Warner was not offering their pictures on a formal competitive bidding basis at this time.

Now, if Warner's were, then I would like to have my memory refreshed. As of now, I can remember no competitive bids on Warner's in this area at this time. And in glancing through these, from which I did refresh my recollection as to a number of the companies, as to what had happened seven years ago and six years ago, I found no bids for Warner pictures in these bidding letters.

Q. Now, turning—let us turn for a moment to Defendant's Exhibit E—Fox's Exhibit E, and ask you if your answer is the same, that upon examining the Fox Exhibit E, which refers to the period March 16th to—pardon me. Instead of Exhibit E, let us look at Exhibit F, referring to the period from April 3rd to May 31, 1950. It is also true, is it not, that there are no Warner bid letters there and that you did not license any pictures pursuant to a competitive bid, is that correct?

A. It is correct that there are no Warner bid

(Testimony of Bert Pirosh.)

letters. Now, I know how Warner's license—Warner today has a form which they send to the exhibitors for bidding and in which the exhibitor may just put his offer on their form and return them one copy. [987]

Now, it is possible that at that time they were doing that—maybe some time in this period, and it is possible I may have made some bids, but no bids on Warner pictures appear in these letters.

Q. All right. Now, during this period, however, can you state—and I believe this is what your testimony was yesterday, that you—well, I will withdraw the question.

Now, Mr. Pirosh, I think you testified yesterday—I will ask you to examine Plaintiff's Exhibit N and Plaintiff's Exhibit O.

The Clerk: Plaintiff Fox exhibit.

Q. (By Mr. Corinblit): Fox Exhibit N and Fox Exhibit O, that you played the picture—would you examine Exhibits N and O and tell me if it isn't correct that you played the picture Fort Worth at your Academy Theatre?

A. According to this record it played at the Fifth Avenue Theatre.

Q. At the Fifth Avenue Theatre?

A. That is what this shows, yes, sir.

Q. And did you play the picture Jim Thorpe, and where did you play it?

A. This indicates that it played in the Academy Theatre.

Q. At the Academy Theatre?

A. Yes.

(Testimony of Bert Pirosh.)

Q. Did you play the picture Captain Hornblower? A. Yes, at the Academy Theatre.

Q. And the picture On Moonlight Bay?

A. At the Academy Theatre.

Q. All right. Did you play the picture Sugarfoot? A. Sugarfoot?

Q. Yes.

A. It is not listed on either of these two exhibits.

Q. Did you play the picture Only The Valiant?

A. Only the Valiant?

Q. Yes.

A. That is not listed on either of these sheets.

Q. Did you play the picture Goodbye My Fancy?

A. Were these pictures released during this period, Mr. Corinblit?

Q. Yes.

A. According to this record I apparently didn't play it.

Q. You didn't play that, Goodbye My Fancy?

A. It doesn't show on this record.

Q. Did you play the picture A Lullaby of Broadway?

A. According to this record I didn't. Now, these records are for the, I think the 7-day availability. Some of these pictures I may have played in some of our theatres on a 14-day availability or a later availability. [989]

Q. Those pictures did not play on a 7-day availability according to your record?

A. I haven't been able to find them on these sheets, no, sir.

(Testimony of Bert Pirosh.)

Q. Now, with respect to Warner's when you did not bid but negotiated—you described something you called "competitive negotiations." How did that work?

A. Well, if my memory of the time is right, if an exhibitor wanted to play a Warner picture he would call Warner's and make them an offer.

Q. And Warner would decide if they thought the offer was reasonable and either accept it or reject it?

A. Warner's at some time would either accept or reject, presumably after they received the offer.

Q. After perhaps they made inquiry to see what other figures were obtainable or they decide that the exhibitor's offer looked reasonable to them and they would go ahead and license it, is that right?

A. I have no knowledge as to how Warner decided which theatre got the picture.

Q. But you have and bid during this period at some time or other negotiate with Warner's for pictures on the 7-day availability?

A. Well, apparently I did because we played some pictures. I have no records here to indicate that I made bids [990] or as I say I can't be positive.

Q. Now, sometimes, even though you might have made bids on some of the pictures, after the bidding was in for some reason or other you might negotiate for the picture if they rejected all bids, for example?

A. Are you talking about Warner's now?

(Testimony of Bert Pirosh.)

Q. Yes. A. During this period?

Q. Yes.

A. Well, I have nothing to lead me to believe that Warner was bidding at this period.

Q. Well, this practice of negotiating, first asking for bids and then rejecting all bids and then negotiating, that is a practice that was carried on from time to time by the distributors, isn't that correct, during this period in Inglewood?

A. Well, Warner at this period—I am not certain that they solicited offers from every exhibitor or whether they would select a theatre and say, "I would like to sell them this picture," or whether they solicited offers from all of the exhibitors or whether the exhibitors would have to call Warner's.

Apparently the Warner pictures at this period played in a number of different theatres on the 7-day availability in Inglewood and I presume it was some kind of competitive [991] negotiation.

Q. As a matter of fact, Warner's during the split period that you have described, that is during the period from September, 1949 to roughly April or May, 1950, as you have described it, when they were going to the La Tijera and the Imperial, that was sold by negotiation, too, isn't that right?

A. I was not buying many of their pictures so I don't know how they sold them.

Q. But you know that you weren't bidding for the pictures? You weren't submitting bids at that time?

A. On most of their pictures, that is correct, sir.

(Testimony of Bert Pirosh.)

Q. Now, this matter of negotiating for pictures. There is nothing particularly unusual about that, is there—that is, that was an accepted practice, negotiating for pictures and bidding for pictures. They were both accepted practices in the industry?

A. It depends on the situation.

The Music Hall Theatre, for example, in New York negotiates for the pictures it wants to play.

Q. But there are lots of theatres in Los Angeles that negotiate. Your theatres that negotiate for pictures that they want to play?

A. Some pictures, yes, sir.

Q. And as a matter of fact, the number of bidding [992] situations you have got is probably small compared to the total number of situations, isn't that right?

A. In the metropolitan Los Angeles area?

Q. Yes.

A. Well, I will have to talk by company.

Paramount offers all of its pictures for every run through—at least through—they offer an exclusive run on a picture and then they offer a 7 or 11-theatre group for second run and then they offer, I think it is 20 or 22 runs behind that all on a competitive bidding basis.

So, if I want to play a Paramount picture in any one of our theatres in the metropolitan Los Angeles area, including the San Fernando Valley, including Pasadena, including Inglewood and Redondo and Westchester and Santa Monica or East Los Angeles, I have to make a bid to play a Paramount picture.

(Testimony of Bert Pirosh.)

Twentieth Century-Fox follows roughly the same procedure. They are bidding throughout their first two or three—what they call swings—the groups of theatres 7-day availability and 21 and so on.

Q. Let me interrupt you for a moment. During the 1949-'50-'51 period you would certainly have roughly as many situations in the Los Angeles area that you were negotiating as compared to the situations in which you were bidding, isn't that right?

A. (No answer.) [993]

Q. If you don't remember, say so.

A. I am trying to think. This is '50 and '51?

Q. Yes.

A. Well, in the towns surrounding Los Angeles at that time we were bidding in the Inglewood-Westchester area. We were bidding in Huntington Park, in Pasadena. I believe in Glendale. I am not positive about Santa Monica. I think that was bidding. It was at some time in there.

We were bidding in the San Fernando Valley. We were bidding in quite a number of the local areas or zones in the city of Los Angeles.

About the only theatres we weren't bidding in at that time as I recall it now, were the little insignificant last run theatres. As a matter of fact, we were bidding in our little Inglewood theater against another for the privilege of coming in after six or seven other theatres. [994]

Q. All right. Now, certainly in your experience as a buyer and booker for Fox, you had many situa-

(Testimony of Bert Pirosh.)

tions in the past in which you were negotiating for pictures, no question about that.

A. Yes, sir, that is true.

Q. That is true? A. Yes, sir.

Q. All right. Now, Mr. Pirosh, I want to call your attention again to the 1950-51 period and I want to ask you this question with respect to Warner's product. Do you remember that among the group of theatres in the area, the Inglewood-Westchester area, that practically every picture that was released by Warner's that was played on a 7-day availability, one theatre was the Southside, do you remember that?

A. I think that they licensed quite a few pictures to the Southside.

Q. The Southside at that time was negotiating for a 7-day availability, do you know that?

A. I don't know how he was getting his pictures.

Q. Now, one way to know whether or not Warner Bros. was negotiating with the Southside is to look at the bid files and to see if there are any bids in there, isn't that right? If there are no bids in there and he gets a picture on the 7-day availability, he is getting it by negotiation, [995] right?

A. I would think that is a reasonable assumption, yes, sir.

Q. I want to show you, Mr. Pirosh, one of the bid files that your attorneys have marked in this case as Joint Plaintiff's and Defendants' Exhibit, and show you a letter dated July 23, 1951.

(Testimony of Bert Pires.)

Before I do that, let me check again the pictures of this group that you did or did not play.

Did you play the pictures Fort Worth or Jim Thorpe?

A. Jim Thorpe I played, and Fort Worth I played. Fort Worth was in the Fifth Avenue.

Q. You played Fort Worth in the Fifth Avenue?

A. Yes, sir.

Q. All right. I will show you the files that have been marked Joint Plaintiff's and Defendants' Exhibit, one of which refers to the picture Jim Thorpe, and show you that Warner's by this file sent out a bid letter, sent out a bid letter to Fox, which you returned. A. Yes.

Q. Sent out a bid letter to the Century Drive-In, sent out a bid letter to the Imperial, which was returned, sent out a bid letter to the La Tijera.

A. Yes.

Q. On their sheet in terms of showing response, they [996] show that the Fifth Avenue did not put in an offer.

Mr. Mitchell: Isn't that on a 14-day availability? It is not a 7.

Mr. Corinblit: You are absolutely correct. You are absolutely correct.

All right. Let's refer to the 14 day availability. Now, on that 14 day availability—

Mr. Mitchell: What is the materiality of the 14 day availability? Have we got to try out the availability of the 14 days and the 21 days? Object to it on the ground it is immaterial.

(Testimony of Bert Pirosh.)

Mr. Corinblit: Your Honor, we have the testimony here, Mr. Pirosh testified in answer to your question yesterday, that there was no deal to lay off the bidding with the distributors. This testimony is designed to go to that point.

Mr. Mitchell: Let's go, then, if there is any question about that.

The Court: Objection overruled.

Q. (By Mr. Corinblit): Now, with respect to the picture Jim Thorpe, 14 day availability for the Fifth Avenue, no bid was submitted by Fox?

A. No. I submitted a bid for the Fox Theatre.

Q. You submitted no bid for the Fifth Avenue?

A. The theatres are competitive. I wanted to play the [997] picture in the Fox Theatre.

Q. Which theatre played the picture?

A. Apparently from this it looks as if the Fox Theatre got the picture on the 14 day availability.

The Academy played Jim Thorpe on 7 day.

Q. Which theatre played the picture on the 14 day availability?

A. According to this, the Fox Theatre and the Centinela Drive-In.

Q. I am talking about your list. Don't you have it?

A. I don't have a list of 14 day availability. On the 7 day availability, the picture played at the Academy Theatre. Where else it played, I don't know.

The Court: May I ask this witness a question?

Mr. Corinblit: Yes, sir.

(Testimony of Bert Pirosh.)

The Court: When Fox made a bid on a picture in the Inglewood area, after you got the picture, did you have a right to allocate the picture to any theatre you wanted to, or did you have to bid for each individual theatre?

The Witness: We would have to make our offer for the specific theatre in which we wanted to play the picture. We never wrote a bid letter and said, "We will play the picture in the Academy or the Fox Theatre."

We make an offer for the Academy Theatre or for the Fox Theatre or for the Fifth Avenue, or perhaps we might make [998] two offers, because we never knew how the distributor would evaluate a bid, and if we were unbooked in two theatres, we might make a bid at the Fifth Avenue Theatre for 14 days, because it is a lower expense house, and 7 or 10 day bid in the Academy Theatre.

If the distributor said, "You are awarded the picture in the Fifth Avenue Theatre," I would have to look for another picture for the Academy Theatre.

The Court: Do you remember any instance where you got a picture for the Academy, and after you got the picture on the bid, you were allowed to put the picture in another Fox Theatre in that locality?

The Witness: I don't recall any such instance, your Honor.

The Court: So the bid was for a particular theatre, and the picture played in that particular theatre?

The Witness: If I got the bid.

(Testimony of Bert Pirosh.)

The Court: If you got the bid?

The Witness: Yes, sir.

Mr. Corinblit: Now, do I understand, counsel, you do not have the 7 day availability bid letters, is that correct, in the latter part of 1951?

Mr. Mitchell: Of Warner Bros.?

Mr. Corinblit: Yes.

Mr. Mitchell: My understanding is for a period of [999] time Warner Bros. sent out bid letters on forms, and the reason Mr. Pirosh says he doesn't have them in his file is the forms, in order to make a bid, had to go back to Warner Bros., so there are no bid requests in his files because they go back to Warner Bros. They had formal competitive bidding, according to my understanding, with Warner Bros. from September, 1950 to May, 1951, and the Warner Bros. documents so show, and we have them here.

Mr. Corinblit: Under your examination, Mr. Mitchell, Mr. Pirosh testified to the effect that his recollection was that there was no formal competitive bidding during this period.

Mr. Mitchell: Mr. Pirosh is not my client and I can't help what he says. If you call a Warner Bros. witness, I will straighten it out. All I can do is take Mr. Pirosh's recollection, and we are about to refresh his recollection with these bid letters and get it straightened out.

Mr. Corinblit: All right.

Mr. Johnston: I think the duty devolves on me to make a statement here, your Honor. I asked

(Testimony of Bert Pirosh.)

Mr. Pirosh about Warner Bros. Warner Bros. counsel have handed me in the past 15 minutes a sheaf of documents which are Warner Bros. forms which I have not heretofore seen other than the last 10 minutes or so. These are forms put out by Warner Bros., and as I look at them, they are sent into Warner Bros., and apparently [1000] we don't have a duplicate of these forms that were sent in to Warner Bros.

When I examine Mr. Pirosh, if I have the opportunity to do so again, I intend to go over these letters with him and refresh his memory as to the situation, if I have the privilege.

The Court: Maybe if you give the forms to Mr. Corinblit, he will use them.

Mr. Johnston: I will be glad to do so if he wishes to.

The Court: Maybe he will refresh the witness' recollection.

Mr. Johnston: He may be more familiar with them than I am.

Mr. Corinblit: Your Honor, this might be a good time to take the afternoon recess so I can go over them.

Mr. Johnston: I would like to look at them, too.

Mr. Corinblit: Certainly.

The Court: All right. We can take the afternoon recess.

Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with

(Testimony of Bert Pirosh.)

anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case is finally submitted to you. [1001]

With that admonition we will now recess until five minutes after 3:00.

(Recess.) [1002]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Pirosh, I want to show you some bid forms which have been produced by your attorneys, which have been previously marked as joint plaintiff's and defendant's exhibits in this case.

Mr. Mitchell: They were produced by Warner Bros. and not by Mr. Pirosh's attorney.

Mr. Johnston: I would like to make it clear again, Mr. Corinblit, that I saw those documents for the first time about 15 minutes before the recess.

The Court: Let the record show they were produced, period.

Mr. Johnston: Not by me.

Mr. Mitchell: If there is some question about withholding I want it understood I have been trying to tell this gentleman, Mr. Pirosh, that there was bidding in this period and he keeps telling me, "I don't remember."

I have never seen these documents, but I had

(Testimony of Bert Pirosh.)

some documents I was going to show to the Warner people and straighten the thing out, but I can't do it when a man won't remember for me. [1003]

Q. (By Mr. Corinblit): Now, Mr. Pirosh, I will show you first a bid file dated—which refers to the picture *Three Secrets* and as a part thereof a document which purports to be a bid application returned by you on behalf of the Academy Theatre.

Now, does that refresh your recollection as to whether or not in September of 1950 you obtained pictures by competitive bidding or by negotiation?

(Handing document to the witness.)

The Witness: This is not signed by me. It is signed by Everett Sharp, but apparently in September——

The Court: The question is does it refresh your recollection.

The Witness: Yes, it does and apparently in 1950 Warner's were offering at least this picture on a competitive bid basis in the Westchester-Inglewood area.

Q. (By Mr. Corinblit): Does it refresh your recollection as to whether or not they were generally licensing their pictures, at least one of their runs, on a competitive bidding basis in September 1950?

A. Yes. My recollection has now been refreshed and I now believe that Warner Bros. were offering their pictures in this area on a competitive bidding basis from approximately September of 1950 for some months thereafter, at least.

Q. And in that connection you want to change

(Testimony of Bert Pirosh.)

your testimony [1004] given yesterday on that point?

A. I was mistaken, yes. I want to change my testimony.

Q. Now, do you know how long it was until Warner Bros., instead of selling pictures on a competitive bidding—withdraw that.

Do you know how long it was—what period Warner's continued to send out competitive bidding forms to the exhibitors in that area?

A. Is it all right for me to answer that as to what someone has told me or does it have to be something I remember?

Q. I think I know what you have reference to and I will refresh your recollection. Based on those two documents——

Mr. Westbrook: Warner's G-5 and G-6. [1005]

Mr. Mitchell: The documentary evidence will show when it started and when it ended.

Mr. Corinblit: Well, now, we will ask the witness.

Q. I show you a letter dated September 5, 1950, from Mr. Kupper to Mr. Herbel, and ask you to read that and tell me if that refreshes your recollection as to the time when competitive bidding began in the Inglewood-Westchester area.

Mr. Johnston: As to Warner Bros. product.

Mr. Corinblit: As to Warner Bros. product.

The Witness: Apparently some time between September 5 of 1950, when this request was made, and October—well, whatever date this was sent out, which is September 22 of 1950.

(Testimony of Bert Pirosh.)

Q. (By Mr. Corinblit): Mr. Pirosh, does it refresh your recollection that that was true?

A. Well, I can see that it is true.

Q. That is, that the bid letters started coming out at that time? A. Yes, sir.

Q. All right. Now, I will show you another document—have you seen this letter marked G-5 by the defendants before? A. No, sir.

Q. I will show you Defendants' Exhibit G-6 for identification—— [1006]

Mr. Mitchell: Defendant Warners.

Q. (By Mr. Corinblit): Defendant Warners' Exhibit G-6 and ask you whether or not you can state when Warners ceased licensing their pictures on a so-called formal competitive bidding basis.

A. According to this letter, Warners ceased on May 17, 1951.

Q. Does that refresh your recollection that that was about the time when that happened?

A. Well, I can see that this is when it happened.

Q. Now, after May 17, 1951, you went into this procedure of negotiating with Warners for a 7 day availability for your theatres, is that right?

A. Well, my memory was faulty on this whole Warner Bros. during this period, and I believe that that is what we did, but I cannot be absolutely sure.

Q. Can you describe for the jury what happens when Warners licenses you on a 7 day availability by negotiation as distinguished from by competitive bidding?

A. Well, by competitive bidding, Warners would

(Testimony of Bert Pirosh.)

send a written request to all of the *exhibits* having theatres that wanted to bid for the 7 day availability in Inglewood.

I, for my company, would decide what terms I wanted to offer for a picture in a specific theatre and mail it to Warners, and some time subsequent to that Warners would advise [1007] me either that I could license the picture or that they are licensing it to a competitor.

Q. All right.

A. On negotiation, on normal negotiation, I would, or someone working for my company, would talk to a representative of Warner Bros. Theatres——

Mr. Mitchell: Not Warner Bros. Theatres.

The Witness: Warner Bros. Pictures, and, roughly, the conversation would be, "I would like to play this picture in the Academy Theatre and I am willing to pay you such-and-such terms," and Warners, if they say yes, they will make a deal, and if they say no, "I don't want those terms, I want this," and if you agree, you license the picture, and if you don't agree, you don't license it.

Q. Now, going back first to the period when Warners was sending out these letters, you will notice that the letters that you received refer to—let's take one of the letters going to the Academy, the picture Dodge City and Virginia City, it shows that the competitive bidding application coming to you says: "Theatre Academy," it names the pictures, and says, "Clear, clearance, the maximum

(Testimony of Bert Pirosh.)

clearance to be granted for this run shall be clear of United Artists Inglewood, La Tijera, Imperial, Southside and Paradise.”

From that, do you conclude what theatres were supposed to be bidding for the 7 day availability against your [1008] theatre?

A. No. I would conclude that if I licensed these pictures at the Academy Theatre, if it was acceptable to Warner Bros., I would receive a run prior to that of these other theatres, whether they were bidding or not bidding.

Q. All right. You did receive a run prior to the United Artists, the La Tijera, and the Imperial, the Southside and the Paradise, is that correct?

A. If I made an offer that Warners would accept, based on this priority of run that they have listed.

Q. All right. Now, I want you to run through the remaining bid groups here in front of you and tell me whether or not your answer is the same with respect to each of the pictures, the following:

The Enforcer, Storm Warning, Raton Pass, Dallas, West Point Story, Highway 301, Breakthrough, Operation Pacific, Lullaby of Broadway, The Glass Menagerie, The Breaking Point, and Rocky Mountain.

That is to say, if you licensed pursuant to that bid letter, you would expect to obtain a run prior to all the theatres that you have enumerated, namely, United Artists, La Tijera, Imperial, Southside, and Paradise?

(Testimony of Bert Pirosh.)

A. Well, on the picture *The Enforcer*, on which I made an offer, if I received the picture on the terms I offered, and in accordance with this letter, I would have received a [1009] run prior to those theatres.

Q. All right.

A. On the picture *Storm Warning*, I made no offer at that time.

On the picture *Raton Pass*, on which I made an offer on behalf of the Fox Theatre, I would not have received clearance or I would not have received a run prior to the Southside Theatre necessarily, because that is taken off the sheet, but the Century Drive-In and the Centinela Drive-In are included, so I would have received a prior run to that, if I received the picture on that offer.

Q. You say the Southside is scratched out?

A. Yes, sir.

Q. Who scratched that out?

A. I don't know.

Q. Well, now——

A. I may have scratched it out. I just can't remember.

Q. All right. Go ahead with the next one.

A. I notice that this was rejected.

Q. Go ahead.

A. On the picture *Dallas*, I made an offer on behalf of the Academy Theatre, and if I had received it, I would have received a run prior to the United Artists, La Tijera, the Imperial, the Southside, the Paradise, but my offer was rejected on that. [1010]

(Testimony of Bert Pirosh.)

Q. All right.

A. So I guess I did not get it.

On The West Point Story, I would have received, if I got the picture, I would receive clearance over United Artists, the La Tijera, the Imperial, and the Paradise. The Southside is scratched off and it looks as if I scratched it off. [1011]

Q. All right. The next picture, On Highway 301.

A. I would receive clearance over the United Artists, La Tijera, Imperial, Southside and Paradise, if I received the picture or should have.

On Breakthrough on which I apparently made an offer at the Academy Theatre, I would receive a run prior to the United Artists, the La Tijera, the Imperial, the Southside and the Paradise, or should have.

On Operation Pacific on which I made an offer in the Academy Theatre, I would have received a run prior to the same group of theatres.

On Lullaby of Broadway, on which I made an offer on behalf of the Academy Theatre, I would have received a run prior to that of the theatres, the same bunch of theatres we have been talking about, plus the Balboa Theatre, plus the Centinella Drive-In, and the Century Drive-In, but that was rejected.

On the picture Glass Menagerie—I didn't make this offer. Another man in our office made the offer on behalf of the Academy Theatre and if we would have received the picture we would have received a run prior to that same group of theatres, namely,

(Testimony of Bert Pirosh.)

the United Artists in Inglewood, La Tijera, Imperial, Southside and the Paradise.

On the picture *Breaking Point* we made an offer on behalf of the Fox Theatre and if we had received it we would have had [1012] a run prior to the United Artists, La Tijera, Imperial, Southside and Paradise.

On Rocky Mountain we made an offer on behalf of the Academy Theatre and had we received it, it would have been a run prior, according to this form, to the same five theatres.

Q. Including the Southside?

A. Including the Southside, yes.

Q. Go ahead.

A. The picture *Sugarfoot*—I can't find the sheet for any of our theatres.

Q. All right.

Now, I want to make some comparisons here.

The picture *The Breaking Point* which played the Academy Theatre October 4 to 11, is that right?

Mr. Westbrook: Counsel, it played the Fox Theatre, I believe.

Mr. Corinblit: Fox Theatre is right.

Mr. Mitchell: Hadn't we better let the witness work from his own records rather than work from Warner Bros.' records? It is most unusual. He is refreshing his recollection from Warner's records. It is all new to me but does he have to use Warner's records?

Mr. Johnston: You have the exhibits N and O which are Fox records and these are not.

(Testimony of Bert Pirosh.)

Mr. Corinblit: All right. Here you are. [1013]

The Witness: Thank you.

Q. (By Mr. Corinblit): Let us look first at the picture—instead of *The Breaking Point*, let us start with the picture No. 007, *The Glass Menagerie*.

Now, what was the date of the playoff at the Academy? A. November 15 to 21, 1950.

Q. It opened November 15 to November 20th?

A. 21, I think.

Q. 11-21. All right.

Now, then, the next picture *Rocky Mountain*. When did it play at the Academy?

A. November 1 to 6.

Q. 11-1 to 11-6. All right. And the next picture *West Point Story*?

A. That played for 11 days, December 20th to December 30th.

Q. 20th to 30th? A. Yes, these are 1950.

Q. Yes. The next picture *Breakthrough*?

A. *Breaking Point*, you mean?

Q. No, *Breakthrough*, Release No. 010.

A. Oh, I see it here. It opened on November 29 through December 5.

Q. What is that again?

A. November 29 through December 5th. [1014]

Q. All right. Now, let us go to the release Highway 301. When did that play Academy Theatre?

A. December 31, 1950, to January 6 of 1951.

Q. Now, Mr. Pirosh, I want to read to you and I will offer in evidence the cut-off cards of the Southside Theatre for the same season. I will first

(Testimony of Bert Pirosh.)

read these off and I will be glad to offer the document in evidence if counsel desire.

The Southside played the picture Glass Menagerie November 15th to 21st.

The picture Rocky Mountain was played November 1 to 7.

The picture West Point Story was played December 20th to December 30th.

The picture Breakthrough was played November 29 to December 5th.

And the picture Highway 301 was played December 31 to January 6.

Now, if we can get this clear, the Academy is located here and the Southside here.

How far are the Academy and Southside approximately apart? Do we have those distances — the Academy and Southside?

Mr. Westbrook: We have yet to find mileages on which we can agree.

Mr. Corinblit: That is true.

Mr. Westbrook: I believe the Southside is approximately 3.6 miles from the Academy. [1015]

Q. (By Mr. Corinblit): 3.6. All right. Now, you notice, Mr. Pirosh, that the picture Glass Menagerie played day and date with the Southside?

A. Yes.

Q. The picture Rocky Mountain played day and date with the Southside? A. Yes, sir.

Q. The picture West Point Story played day and date with the Southside Theatre?

A. Yes, sir.

(Testimony of Bert Pirosh.)

Q. And the picture Breakthrough played day and date with the Southside Theatre?

A. Yes, sir.

Q. And the picture Highway 301 played day and date with the Southside? A. Yes, sir.

Q. Now, would you look again at the bid forms for those pictures? A. Rocky Mountain.

Q. All right. Now, under the contract—under the bid application that was accepted by Warner's— A. That is no contract.

Q. This bid application. I will put it that way. The bid application submitted by you contained the provision that you were to have a priority of run over all of the theatres [1016] including the Southside, is that right?

A. That is what I asked for, yes.

Q. But in fact what was licensed was day and date with the Southside, correct?

A. Apparently that is correct, sir.

Q. Now, let us look at the next picture Glass Menagerie. We will start with Glass Menagerie, if you have got it. [1017]

A. Here it is.

Q. Glass Menagerie under the application that you submitted, you would have had a priority of run over all of those theatres including the Southside, is that correct?

A. That is what we asked for.

Q. What was licensed was a day and date application with the Southside?

A. We didn't get what we asked for.

(Testimony of Bert Pirosh.)

Q. Well, now, as a matter of fact, Mr. Pirosh, when this form came to you it had written in it by Warners "These clearance provisions," isn't that right? A. That is right.

Q. In other words, Warners sent you an application and said the clearance that we will give you is clearance over the United Artists, Inglewood, the La Tijera, the Imperial and the Southside. That is what Warners said?

A. That is what they said on the form?

Q. Yes. A. Yes, sir.

Q. And then you sent back an application which said the same thing—that is, you signed the application? A. That is what we wanted.

Q. They offered it to you and that is what you wanted?

A. They said they offered it to us, yes.

Q. Now, what happened in between that time and the [1018] fact that you played day and date?

A. Well, what happened was that if we insisted on the clearance over the Southside we wouldn't get the picture.

Q. But Warners offered it to you?

A. Offered it to us there but they didn't offer it to us in fact.

Q. You remember that?

A. Well, I know that. I remember this—I can't remember every licensing of every picture in this area at that time, naturally, but I do know that for some period of time I was arguing or quarreling with a number of the distributors concerning the

(Testimony of Bert Pirosh.)

way they were licensing pictures in the Inglewood and Westchester area.

It was my feeling that our theaters were being seriously affected by the manner in which some of the distributors wanted to license their pictures, and in order to try to protect our investment and potential profit I tried to get the best run that I could for our theatres.

Now, I do recall that Warner Bros.—I recall no specific picture, but an over-all argument that we should have—that the Academy Theatre was substantially in—was in substantial competition to the Southside Theatre and we were unsuccessful despite what was written on these forms in getting Warner Bros. to license these pictures at least during this period on a run prior to the Southside Theatre.

We then had the option of playing the pictures on the day and date run or not playing the pictures. Where we thought we were better off playing these pictures day and date with the Southside instead of playing possibly an inferior picture, as the record shows, we undoubtedly agreed to play day and date.

Q. With the Southside. All right.

A. With the Southside on these pictures.

Q. And it has been stated the Southside Theatre is approximately three and a half miles away from the Academy.

Mr. Westbrook: 3.6 miles, counsel.

Mr. Corinblit: 3.6 miles. All right.

Q. Now, Mr. Pirosh, it has also been—I don't know if it has been stipulated to yet, but it has been

(Testimony of Bert Pirosh.)

stated that the distance between the Academy and the Paradise is four and a half miles.

Now, you didn't want to play day and date with the Paradise, did you?

A. I didn't want to play day and date with the Paradise or the Southside.

Q. But Warner Bros. said you—you were able, however, to convince Warners that you would play day and date with the Southside—I beg your pardon—that you would play day and date with the Southside but not with the Paradise?

A. No. Now, you are putting words in my mouth. I wasn't [1020] able to convince Warners of going along and saying that the Academy is competitive to all of these theatres.

I had no more objection to playing day and date with the Paradise Theatre than I had to playing day and date with the Southside Theatre, but Warner Bros. told me they liked the Academy Theatre, it was a good, high grossing theatre in this area and they told me that the Southside Theatre had done better on the pictures of theirs that played there than the Paradise.

Some of these pictures may have played in the Paradise, too, I don't know. And if you are implying that I, representing Fox West Coast was playing footsie with Mr. Marco Wolff as opposed to any other exhibitor in the area, I want to assure you you are mistaken. I had no conversation with Mr. Wolff regarding what Warners were doing and I kept explaining to Warners that they were hurting my the-

(Testimony of Bert Pirosh.)

atres and Warners laid it down to a take it or leave it proposition and when we thought we were better off, fine, we took it. [1021]

Q. I don't mean to imply anything, Mr. Pirosh. I am trying to get the facts here and see if you would answer this question. The fact is, is it not, that you were much more insistent on getting clearance over the Paradise, four and a half miles away, than you were on getting clearance over the Southside, three and a half miles away, because clearance over the Paradise would protect the Loyola, as well as protect the Academy, isn't that correct?

A. How would clearance in the Academy Theatre over the Paradise possibly help the Loyola Theatre?

Q. When your pictures played first run in the Academy Theatre, if a theatre located three blocks away had a regular flow of 7 days pictures in that area competing for the customers in the Westchester area with good strong pictures from the other distributors, wouldn't that have affected your Loyola Theatre?

Mr. Mitchell: I object to the question on the ground it assumes facts not in evidence. There were no pictures playing first run in the Academy Theatre.

Mr. Corinblit: Did I misspeak myself?

Mr. Mitchell: I don't know. The question is so long I can't remember.

Q. (By Mr. Corinblit): With respect to the Loyola Theatre——

A. Yes, sir. [1022]

(Testimony of Bert Pirosh.)

Q. If the Loyola Theatre were playing first run and the Paradise were playing a steady flow of pictures on a 7 day availability of the other distributors, wouldn't that affect the ability of your Loyola Theatre to compete with the Paradise for patronage in the Westchester area?

A. I wouldn't think so, so long as the Loyola and Paradise were not playing the same picture. If people in that area wanted to see a picture that was playing in the Loyola, I think they would have gone to the Loyola. It has been my experience, Mr. Corinblit, that when in an area like this or any limited area, there are three or four good pictures playing currently in theatres close to one another, people coming down to that area who want to see one, if they can't get in that theatre, they will go to another. If there is only one good picture and three or four poor ones, they probably feel, "If I can't get in this theatre, then I won't go to any of them. I have just wasted my time on this trip, because I am not going in any of the others."

It doesn't hurt us, I don't think, at the Chinese Theatre that Cinerama is doing a lot of business on the street. I think it helps us. It brings people into the general area.

So until you mentioned this, I had never thought of the Loyola in connection with this Academy and Paradise clearance. It never had crossed my mind.

Q. You never thought it was to Fox' interest to keep [1023] the Paradise in as poor competitive a position as possible?

(Testimony of Bert Pirosh.)

A. It is to Fox' interest in the Academy Theatre to secure the best run we can get for the theatre, and if we can get clearance or a run prior to theatres which I still feel are in substantial competition, even though they may frequently play day and date, that was my job to do for my company.

Q. It was also your job that you were to do for your company to keep the Paradise in as poor competitive position as possible, isn't that right?

A. I don't care if the Paradise Theatre makes a million dollars, as long as we get what we think we should be doing in the Academy.

As a matter of fact, since you ask that question, I am very happy when our competitors are prosperous and happy, because the more money the competitors are making, the less trouble there is in operating their own theatres. If a man is healthy and happy with his product he doesn't come yammering around or complaining about what we are doing. He runs his business and we run ours. That is the way we like it.

Q. I want to ask you, Mr. Pirosh, when you testified before with respect to one of these pictures, you scratched out the Southside. Do you remember, was that pursuant to some discussion with Warners, or don't you remember that?

A. I think that was a picture for which we made an [1024] offer in the Fox Theatre. We did not take the stand that the Fox Theatre was in substantial competition to the Paradise—to the Southside Theatre, because it was further away than the Acad-

(Testimony of Bert Pirosh.)

emy, and in our opinion played to a completely different audience.

The Academy Theatre, not being in downtown Inglewood, must of necessity from the day it was built have drawn from a pretty wide area. There was no tremendous built-up area right at the Academy. There is Leimert Park on one side, and the homes to the south and the west, and it is just in the past three years that there has been any considerable building to the west of the Academy Theatre, toward the Westchester area, and so on. That is comparatively new, and I think mostly since the war.

Q. This position you took with respect to Warners of clearance of the Academy over the Paradise is a position that you took with each of the distributors, is that correct?

A. I asked for a prior run, and some companies agreed that the Academy was entitled to a prior run and some companies like Columbia and subsequently Warners said, "We are going to sell the Paradise, and if you don't want to play the pictures at the Academy Theatre, don't play them," and sometimes we didn't.

Q. I think Mr. Mitchell asked you yesterday about this question of clearance. I think you testified with respect to [1025] the clearance and the matter of priority of run.

When bidding was set up and you bid, for example, on these Warner pictures, the offer that was given to you by Warners, the competitive bidding

(Testimony of Bert Pirosh.)

application, your understanding was if you obtained the picture under this competitive bidding application, you would have obtained the right to have priority of run over the theatres named in that group, is that correct?

A. I think before I was awarded these pictures you are talking about on the board, I was told by Warners that, "If your bid is the best—your bid is the best and we are willing to sell you, but if you insist on a run ahead of the Southside, you are not going to get it."

Q. But the offer made to you, apart from the Southside, when you bought the run, you bought the run with the right to have priority of run ahead of the other theatres, isn't that correct?

A. Warners were licensing two runs in the area, as I understood it, at the time generally.

Q. Yes.

A. If they told me the Southside was going to be the other theatre, I knew these other theatres wouldn't be playing on the same availability. I didn't get clearance, but I did get a run prior.

Q. You got the right to have the prior run?

A. If I played the availability. If I were late, I would have no priority, because these other theatres were being licensed to run on the 14 day availability.

Q. Now, Mr. Pirosh, one other thing, and perhaps I asked you this before. I notice in the bid groups—withdraw that for the moment.

Looking at the names of these theatres listed in

(Testimony of Bert Pirosh.)

the bid groups, under the form that Warners sent you, the way in which they were handling the matter, you expected that all these theatres were bidding, did you not?

A. I did not know if any of the theatres were bidding on any specific picture.

Q. But these were the theatres against whom you were supposed to be bidding?

A. Not necessarily.

Q. Not necessarily?

A. These were the theatres, if Warners did what they said they were going to do, if I got the picture, I would play ahead of them. Maybe none of them were bidding.

Q. So despite these bid letters, there was nothing to prevent Warners from negotiating with one of these theatres for a 7 day availability, was there?

A. Well, I don't think Warners could have negotiated with any of the theatres for the 7 day availability until they decided which theatre had the best bid. [1027]

I think what Warners was doing, and there is a little bit of guesswork in this, was licensing one run on a competitive bid during this period.

Q. Right.

A. And negotiating evidently on a number of pictures with Mr. Marco Wolff in the Southside Theatre.

Q. They were licensing one run on a competitive bid and negotiating the second run day and date, right?

(Testimony of Bert Pirosh.)

A. That is my best guess on it now. Each distributor, as you heard, during these two years or several years in this area was experimenting. A lot of new theatres, good theatres, and a couple of drive-ins, were built, which completely upset their estimates of how they should license the pictures in Inglewood. I think they were groping, and we, of course, in respect to our theatres, were trying to make as much money in them as we could. We didn't do it.

Q. Do you know, Mr. Pirosh, that during this entire period Warners refused to negotiate for a 7 day availability with the Paradise Theatre?

A. I had no knowledge as to that.

Q. You had no knowledge of that fact?

A. You asked me if I knew, and I certainly don't remember anything of that sort.

Q. You know, do you not, that during this period all of the distributors, that is, the defendant distributors in this [1028] case, refused to negotiate with the Paradise Theatre for a 7 day availability?

A. They weren't negotiating with me, either, I was bidding my brains out to try to get pictures.

Q. You know, however, they did not negotiate with the Paradise? Do you know that?

A. I don't know. I think the Paradise played a couple of Warner pictures shortly after he opened. I don't know how he got them. He played some pictures. I don't know how he got his pictures, but the theatre was open seven days a week all year long, and if he had to bid the way I did, I don't see any-

(Testimony of Bert Pirosh.)

thing wrong with that. If he negotiated, then he was smarter than I was.

Q. Do you know that when the Paradise asked each of the distributors for the privilege of negotiating for a 7 day availability, that he told the distributors he didn't want any clearance over anybody on a 7 day availability except the Loyola and, of course, they were playing first run?

A. And the La Tijera Theatre.

Q. On the 7 day availability. Well, for a period, that is correct.

A. Sure. Look, Mr. Corinblit, that is fine. I would like to be able to build a theatre on Hollywood Boulevard and be able to play day and date with the Chinese Theatre, or I would like to be able to build a theatre—according to that [1029] line of reasoning, if the Paradise was not competitive to anybody in the world, then a good picture would play in the Inglewood area in the Paradise and the La Tijera and the United Artists and the Academy and the Southside and the Rio and the Imperial, and all the other pictures that are released then we wouldn't play in any theatre in Inglewood. Everybody would want the good picture.

Maybe that is the way to operate the motion picture business, but I don't know where the distributors would get the prints to serve all these theatres that want to play the same picture the same day in every area. That could be true all over the city.

Q. Mr. Pirosh, I think Mr. Mitchell asked you as to whether or not there was any conspiracy be-

(Testimony of Bert Pirosh.)

tween you and any of the defendants in this case during the period of time covered.

I will talk first about the period 1950-1951 with respect to the first run matter.

A. Would you tell me again who the defendants are in this case? [1030]

Q. Yes, the defendants are Loew's Incorporated, Warner Bros. Pictures, Warner Bros. Distributors, Universal Film Exchanges, Paramount Pictures Inc., Twentieth Century-Fox, National Theatres Corporation and Fox and Fox West Coast.

Now, Mr. Pirosh, having in mind Fox West Coast and also having in mind the United Artists Theatres Circuit, Inc., talking about first run Los Angeles, it is a fact, is it not, that you had discussions with Mr. Hickey in which you told him that all of the exhibitors, that is first run exhibitors, had divided the product of all of the film companies on first run in Los Angeles?

Mr. Mitchell: Now, your Honor, the period with respect I asked the witness the question was September 17, 1950 to September 17, 1951, and proper recross examination should be limited to that period and not to the earlier part of 1950 or any other time. Otherwise we will just roam all over the period of time.

The only period material to this action in respect to the conspiracy or for that matter I think anything else, is September 17, 1950 to September 17, 1951. That is all I asked him about.

Mr. Corinblit: Your Honor, I will be glad to put

(Testimony of Bert Pirosh.)

the question during that period for the purpose of this question.

Q. Mr. Pirosh, it is a fact, is it not, that you talked [1031] to Mr. Hickey and described to him an arrangement between Fox and the other exhibitors, first run exhibitors in Los Angeles, whereby the first run pictures were allocated in the Los Angeles area in September 1950 and '51?

A. This is with reference to downtown Los Angeles?

Q. Yes.

A. Well, during that period we were playing the product of Twentieth Century-Fox in our Los Angeles Theatre.

I had not played any pictures released by Mr. Hickey's company, Loew's Incorporated, for a long time. And as a matter of fact, when Mr. Hickey was bidding downtown somewhere in this period, he didn't even send me any bid letters because he knew we couldn't play the pictures and I had no discussions whatsoever with Mr. Hickey with reference to downtown Los Angeles pictures, in downtown Los Angeles at that time as far as the pictures were concerned.

Q. Mr. Pirosh, in this case the record shows that Mr. Hickey testified that the exhibitors, downtown exhibitors got together and allocated product on first run and that you went in—that you were one of the people, yourself, Mr. Stein, Mr. Rosenberg went in and told him you were doing it. Is that testimony correct?

(Testimony of Bert Pirosh.)

A. No, sir. I repeat that at this time we were playing in our theatre downtown the product released by Twentieth Century-Fox. I received no bid letters from Metro. [1032] I had no discussions with Mr. Hickey or with Mr. Rosenberg or with Mr. Stein or Mr. Miller about the situation in downtown Los Angeles at that time, because I had no cause to. I had the Fox pictures in our theatres, and we couldn't use any other pictures if we wanted to. If Mr. Hickey testified I talked to him about that I am afraid he made a mistake.

Mr. Corinblit: No further questions.

Mr. Johnston: I have a very few questions, your Honor.

Recross Examination

Q. (By Mr. Johnston): Mr. Pirosh, I want to ask you a question or two about the matter of convenience to the public which Mr. Corinblit inquired of you.

Now, take the picture currently playing at the Chinese Theatre. What is the admission price for that picture? What is the admission price of the picture you are playing at the Chinese Theatre at this time?

A. Night time general admission for adults is \$2.00. That includes all taxes.

Q. When that picture gets out on subsequent run, which you described as being some months from now, the admission price charged in your theatres and probably other theatres will be considerably less than that, will it not?

(Testimony of Bert Pirosh.)

A. In some of the theatres it will be 25 per cent of [1033] that.

Q. And I think you said this morning it would get down to fifty cents in the Baldwin Theatre, if it plays that house, or fifty cents in some other theatre playing some months from now.

Now, do you not consider, Mr. Pirosh, the segment of the population which does not wish to pay \$2.00 or cannot pay \$2.00 and that it is a convenience to those people to be able to see the picture at a price which will save fifty cents some weeks or months from now?

A. Well, I don't see that it is any different. When a picture plays in the Music Hall in New York, if anybody in New York or Brooklyn or the Bronx or Jersey City or Newark, New Jersey or as a matter of fact, I think from a radius of many miles, they go to the Music Hall or wait until it comes to a closer theatre.

That has been common practice in distribution and exhibition of motion pictures in practically every big city in the United States.

Q. What I am trying to say is, that it is a convenience to those people who do not wish to pay \$2.00 to have an opportunity to see the picture at fifty cents at some future time, isn't that right?

A. They can see it for fifty cents, yes, sir.

Q. Right? [1034] A. Yes.

Q. Now, are you familiar, Mr. Pirosh, with the pictures other than Fox pictures which played the

(Testimony of Bert Pirosh.)

Loyola Theatre from the period of August 1950 through September of 1951?

A. I think that there were a few of them, yes.

Q. Do you know what pictures other than Fox pictures—that is, what other distributors played in that theatre during the period from August of 1950 to September of 1951?

A. I am not positive as to which pictures played or which distributors.

Q. You know, do you not, that none of the defendants in this case, none of the defendant distributors—Warners, Loew's, Paramount or Universal played a single picture in the Loyola Theatre from August 1950 to September 1951. You know that, don't you?

A. I don't know it, but it is quite possible.

Mr. Johnston: Is there any dispute about that, Mr. Corinblit?

Mr. Corinblit: I don't believe there is.

Mr. Johnston: Thank you.

Mr. Corinblit: We are preparing a play-off on the Loyola Theatre and we will confirm that fact later.

Mr. Johnston: It is your present belief that my statement is correct?

Mr. Corinblit: Yes, it is.

Mr. Johnston: Thank you. I have no further questions. [1035]

Mr. Mitchell: Your Honor, I simply wish to offer in evidence the two documents that were used to refresh Mr. Pirosh's recollection. One letter is from

(Testimony of Bert Pirosh.)

Mr. Kupper, dated September 5, 1950, initiating competitive bidding and the letter or the memorandum dated May 17, 1951, terminating competitive bidding in the Inglewood area. These letters are marked respectively at the present time for identification Defendant Warner's Exhibits G-5 and G-6.

Mr. Corinblit: On that, your Honor, without waiving our general objection with respect to inter-office matters that we presented a memo on to you, we will not make any objection to the introduction of these two exhibits.

The Court: They may be received in evidence.

(The documents referred to were received in evidence and marked Warner's Exhibits G-5 and G-6 respectively.) [1036]

* * * * *

Q. (By Mr. Corinblit): Mr. Pirosh, I will show you Defendants' Exhibit P-62——

Is this marked for any particular defendant, or just P-62?

Mr. Bakaly: It is Joint Defendant Distributors' Exhibit.

Q. (By Mr. Corinblit): I ask you to read this letter [1040] and see if it refreshes your recollection with regard to a meeting with Mr. Ball around September 1949? A. This is hard to read.

Mr. Mitchell: I would suggest, your Honor, if he is going to do something with this letter, unless you want to go on a while, we better stop now, because this is a new gambit involving Columbia, and not involving Mr. Pirosh.

(Testimony of Bert Pirosh.)

The Court: Mr. Pirosh can read the letter. The question is, does it refresh his recollection. He can answer that yes or no.

Mr. Corinblit: I don't want to bring Mr. Pirosh back if I can avoid it, so we might as well do it now.

Mr. Johnston: I don't see Mr. Pirosh's name mentioned in this document at all, Mr. Corinblit.

The Court: Well, let Mr. Pirosh answer. Does that refresh your memory in any way?

The Witness: My name isn't mentioned in this, that I can see.

The Court: Did you ever see that letter before?

The Witness: No, sir.

The Court: Even though it refreshes his recollection, you can't introduce the letter, can you, just on that basis?

Mr. Corinblit: No. We will have to call a Columbia witness, your Honor. We will withdraw the offer. [1041]

* * * * *

LAWRENCE W. MARRIOTT

called as a witness on behalf of the plaintiff, under Rule 43(b) of the Federal Rules of Civil Procedure, having been first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: Lawrence W. Marriott. [1046]

Direct Examination

Q. (By Mr. Corinblit): Mr. Marriott, by whom are you employed?

A. Universal Film Exchange.

(Testimony of Lawrence W. Marriott.)

Q. That is the Universal Company that is a defendant in this case? A. Yes, sir.

Q. And how long have you been employed by that company? A. About 12 years.

Q. And how long have you been employed by that company in Los Angeles?

A. The full length of time.

Q. And from the time you came to Los Angeles through 1949, '50 and '51, what job did you have with Universal here in Los Angeles?

A. Branch manager of the Los Angeles Exchange.

Q. As branch manager of the Los Angeles Exchange, what area did your authority cover?

A. We covered Southern California, Arizona and a few towns in Nevada.

Q. Calling your attention, Mr. Marriott, to the years 1949, '50 and '51 and particularly to the year 1950, February 6, 1950, I will show you a document which has been marked as Plaintiff's exhibit for identification 14-A, and [1047] ask you whether or not you received the original of this letter at the Universal Film Exchange? A. I no doubt did.

Mr. Corinblit: I will offer in evidence Plaintiff's Exhibit 14-A.

The Court: It will be received in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 14-A, was received in evidence.) [1048]

* * * * *

Q. (By Mr. Corinblit): On the same date, a

(Testimony of Lawrence W. Marriott.)

copy of that same letter was sent to Universal in New York with an enclosure, Mr. Marriott—

Mr. Corinblit: I will offer in evidence Plaintiff's Exhibit 14-B.

The Court: It may be received in evidence.

The Clerk: Exhibit 14-B.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 14-B.)

The Court: What is the date of that letter?

Mr. Corinblit: February 6, 1950, the same date.

* * * * *

Q. I will show you next, Mr. Marriott, a letter which has been marked as Plaintiff's Exhibit 14-C, which is a letter from Mr. Blake to Mr. Schreiber dated February 15, 1950, and ask you if you received a copy of this letter on or about the time it was mailed to Mr. Schreiber.

A. I am satisfied I did.

Mr. Corinblit: I will offer in evidence Plaintiff's Exhibit 14-C.

The Court: It may be received in evidence.

The Clerk: Exhibit 14-C.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 14-C.)

Mr. Corinblit: Exhibit 14-C, the letter from F. M. Blake to Mr. Alex Schreiber—

Q. Who is Mr. Blake, or was he in February, 1950, Mr. Marriott?

A. Mr. Blake was the western sales manager.

Q. What area did his authority cover?

A. As far east as Chicago. [1051]

(Testimony of Lawrence W. Marriott.)

Q. And from the Pacific Coast to Chicago?

A. That is correct.

Q. Roughly cutting the United States in half?

A. That's right. * * * * *

Q. Subsequently, in about April, 1950, Mr. Schreiber did have a discussion with you at your office in Los Angeles, isn't that right?

A. I believe so.

Q. Now, that discussion had to do in part with first [1052] run Los Angeles, did it not?

A. No, sir. To my knowledge, the first trip Mr. Schreiber, when he visited our office, he just come in to get acquainted with the men in the Los Angeles area.

Q. In other words, there was a time when Mr. Schreiber came in to visit with you and to get acquainted with the men in the Los Angeles area?

A. That's right.

Q. Was there a time when he came in to talk to you and did talk to you about first run pictures?

A. I don't remember that he did.

Q. You do recall that in 1950 the operators of the Paradise Theatre asked Universal for the privilege of licensing their pictures on Los Angeles first run, you do recall that? A. I think that's right.

Q. That request was, to your knowledge, for first run Los Angeles, isn't that right?

A. I think that's right.

Q. Now, in 1950, with respect to Universal, the fact is, is it not, as has been testified to heretofore, that Universal was licensing its pictures customar-

(Testimony of Lawrence W. Marriott.)

ily to a theatre downtown, the United Artists Theatre? A. Correct.

Q. A theatre in Hollywood—do you remember the name [1053] of the theatre at that time?

A. It was no doubt the Iris or the Fox Guild.

Q. Or perhaps the Vogue?

A. Or the Vogue.

Q. The Vogue, Iris, or the Guild.

A. That's right.

Q. And a theatre on Wilshire Boulevard known as the Ritz Theatre? A. That's right.

Q. A theatre in Studio City known as the Studio City Theatre? A. That's right.

Q. And a theatre in Culver City known as the Culver Theatre? A. I presume so.

Q. Now, the theatres on Hollywood Boulevard with whom you were licensing first run at that time were all less than a thousand seats, you remember that, don't you? A. That's right.

Q. The theatre in Studio City was less than a thousand seats? A. That's right.

Q. The theatre in Culver City was less than a thousand seats? A. That's right. [1054]

Q. The theatre on Wilshire Boulevard was about 1,300 plus seats? A. In that neighborhood.

Q. And the theatre downtown was quite a large theatre, the United Artists Theatre?

A. About 2,000 seats.

Q. Now, in fact, Mr. Marriott, you remember your company had been licensing first run to this

(Testimony of Lawrence W. Marriott.)

group of theatres since at least 1946, isn't that right? A. I think that's right.

Q. You recall also, do you not, that during this period from 1946 to 1951 when you were licensing your pictures first run to this group of theatres, Universal received no offer from Warner's, RKO, Paramount, the Egyptian, or the Loew's Theatres to buy Universal pictures on first run, isn't that correct?

A. I think that's right, to my knowledge.

Q. And it is also true during that period Universal did not offer its pictures to any of this group that I have mentioned, is that correct?

A. As far as I know, that is correct.

Q. Now, at the time Mr. Schreiber on behalf of the Paradise asked for first run, that request on behalf of Mr. Schreiber was rejected by your company, was it not? A. That's right. [1055]

Q. What was the reason that your company stated to Mr. Schreiber as being the reason for rejection?

Mr. Mitchell: I think we better lay a foundation for this, your Honor. He says the company. Companies don't talk, and I think we ought to see who was there, if he knows.

The Court: Was this rejection in writing or was it oral?

The Witness: I don't recall. I don't recall. [1056]

Mr. Mitchell: I think there is a writing, your Honor, and if he wants the conversation I have no objection—if he knows anything about the conver-

(Testimony of Lawrence W. Marriott.)

sation, but to me it is incongruous that a company talks. Somebody must speak.

Q. (By Mr. Corinblit): Well, now, in April of 1950, after Mr. Schreiber had made the request for the opportunity to license your pictures on first run in Los Angeles, he had a conversation with you in your office in Los Angeles about that subject, didn't he? A. No, sir, I don't remember that.

Q. You don't recall whether he had a conversation or did not?

A. I don't recall having a conversation with Mr. Scheiber about first run product.

Q. Isn't it a fact that Mr. Schreiber and his son Max came in to see you on or about April 12, 1950, at about 1:15 p.m.?

A. I don't know what time. I think Mr. Schreiber and his son visited me in my office, that is true.

Q. Do you remember that he and his son visited you in your office? A. That is right.

Q. All right. Now, the question is, did Mr. Schreiber and his son discuss with you the matter of first run pictures? A. I don't think he did.

The Court: Was it just a friendly visit?

The Witness: Yes, sir. Mr. Schreiber's visits were all short—just a very few minutes, because I think he realized I was a busy man and he was a busy man.

The Court: All the visits that Mr. Schreiber had with you were friendly visits, just for the purpose of getting acquainted?

The Witness: Yes, sir.

(Testimony of Lawrence W. Marriott.)

Q. (By Mr. Corinblit): Well, now, you heard me read into evidence just a few minutes ago—I think the court reporter has taken the document, but you heard me read the letter from Mr. Blake advising Mr. Schreiber to discuss the matter of his request about first run with you or Mr. Rose. You heard that, didn't you? A. Yes, sir.

Q. Now, it is your testimony that Mr. Schreiber and his son did not discuss that matter of first run with you in your office in Los Angeles on or about April 12, 1950?

A. That is right. I don't remember, I don't remember that he did.

The Court: Do you remember he discussed that matter at any time?

The Witness: No, sir, not personally.

The Court: In your office?

The Witness: No, sir. [1058]

Q. (By Mr. Corinblit): Now, isn't it a fact, Mr. Marriott, that Mr. Schreiber with his son came in and talked with you at that time and you told them—they asked you for first run and you told them that your pictures were being sold to the same combination and you didn't see how they could add any other theatres to the group?

A. I don't remember telling him that.

Q. Didn't he tell you about the area in Los Angeles where the theatre was to be located and didn't you tell him at that time that you knew the area very well because you passed it quite often

(Testimony of Lawrence W. Marriott.)

by car as well as when you took airplane trips on behalf of your company?

A. That could have happened.

The Court: But you don't remember it.

The Witness: I no doubt told him that because I do live in Inglewood myself.

Q. (By Mr. Corinblit): And you do remember telling him that that area in which he was building a theatre was a very fine area, isn't that correct?

A. No, sir, I don't remember telling him that.

Q. And did you tell him not only—didn't you tell him that it was not only a fine area, but it should do a very fine business regardless of what run pictures he got?

A. No, sir.

Q. You did not tell him that? [1059]

A. Not to my knowledge.

Q. Didn't you tell him at that meeting in effect you could not make any statements or commitments on the run requested because that was up to Mr. Rose, your district manager, and Mr. Rose had recently replaced Mr. Blake who was to have made the decision originally. Did you tell him that?

A. I could have. I don't remember doing it, but I could have.

Q. Now, the things that you could have done you say. Did they occur at a meeting with Mr. Alex Schreiber on or about April—in or about April, 1950?

A. As I stated before—I don't—the questions you asked me I told you I didn't remember. Naturally, something was said when he was there in

(Testimony of Lawrence W. Marriott.)

April. He just didn't come in and sit there to entertain himself. He said something.

Q. He didn't ask you for first run?

A. To my knowledge, no.

Q. Didn't he tell you that he had been during that precise period going from distributor to distributor discussing the matter of first run? Didn't he tell you that?

A. I don't remember that he did.

Q. Mr. Marriott, I will show you a document which is a memorandum of that conversation, marked Plaintiff's [1060] Exhibit 14-D for identification, a memorandum made by Mr. Schreiber. I want you to look it over and——

Mr. Mitchell: There is no evidence to that effect. I think these memoranda that are being used should be properly introduced through a foundation laid and I don't see how a memorandum made by somebody else can refresh the recollection of this witness.

The Court: The memorandum is being shown the witness for the purpose of refreshing his recollection.

Mr. Mitchell: Counsel proceeds to state what it is as though it were in evidence.

The Court: It is not in evidence, but he is trying to describe the memorandum. It has to be described in some manner.

Q. (By Mr. Corinblit): I will ask you to examine Plaintiff's Exhibit 14-D. Read it over and tell me if that refreshes your recollection about a meeting with Mr. Alex and Max Schreiber on or

(Testimony of Lawrence W. Marriott.)

about April 12, 1950. A. (No answer.)

Q. The question is, Mr. Marriott, does that refresh your recollection whether in April of 1950, on or about April 12, Mr. Schreiber and his son came into your office, discussed the matter and asked you whether or not Universal would license first run pictures to the Paradise Theatre? Does it refresh your recollection? [1061]

A. It doesn't in regard to the first run pictures, no, sir.

The Court: Does it refresh your recollection in any other way?

The Witness: The only thing it refreshes my mind was when he mentioned about my telling him that I lived in Inglewood and I knew the area. That is the only thing that refreshes my mind.

The Court: That is the only thing you can remember now of the conversation?

The Witness: Yes, sir.

Mr. Corinblit: I would like to offer in evidence Plaintiff's Exhibit 14-E, which is a letter, Simon to Universal in New York, dated April 17, 1950.

The Court: It will be admitted in evidence.

The Clerk: Exhibit 14-E.

(The document heretofore marked Plaintiff's Exhibit 14-E, was received in evidence.)

Mr. Corinblit: This is a letter—

Mr. Mitchell: Since no foundation has been laid for it, and I haven't raised any question about foundation, but I think we should agree, though, on who Mr. Simon is.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: Yes. Mr. Simon was the attorney for the Paradise Theatre Building Company.

Mr. Westbrook: With offices in Chicago. [1062]

Mr. Corinblit: Yes, with offices in Chicago.

The Court: Is that stipulated to?

Mr. Mitchell: Yes.

Mr. Corinblit: Yes. * * * * * [1063]

Mr. Corinblit: We will next offer in evidence Plaintiff's Exhibit 14-F, which is a letter from Landau to Simons dated May 4, 1950.

Mr. Mitchell: I am not objecting that there is no foundation. It is Cyril C. Landau. I would like to have you agree that Mr. Seymour Simon, an attorney, wrote the letter to Mr. Landau, an attorney for Universal in New York, who is the man who is replying, is that right?

Mr. Corinblit: Yes.

The Court: It may be admitted in evidence.

The Clerk: 14-F.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 14-F.)

Mr. Corinblit: Was Mr. Landau house counsel of Universal at that time?

Mr. Westbrook: I can't state that with accuracy. He was a member of the legal staff, at least. [1065]

* * * * *

Q. (By Mr. Corinblit): You received a copy of this letter on or about the time it was mailed, did you not, Mr. Marriott? A. Yes, sir.

Q. Now, to go back for a minute to the time

(Testimony of Lawrence W. Marriott.)

when you learned, when you received the first letter from Mr. Schreiber asking for first run Los Angeles, which is in about February, I want to ask you, Mr. Marriott, with respect to the 7 day situation in the Inglewood-Westchester area, the fact is, is it not, that for about at least four or five months before February, Universal had been splitting its product between Fox and the La Tijera Theatre, isn't that correct? A. Not to my knowledge.

Q. Isn't it a fact that Universal during that period was licensing its pictures one by one as they came off on negotiation, no bidding, to Fox, or to the La Tijera, isn't that correct?

A. Or to the United Artists.

Q. Or to the United Artists?

A. The United Artists.

Q. But it was doing it by negotiation, correct?

A. That is true.

Q. Do you remember in your deposition when I took your deposition some time ago, I asked you approximately the same question and you stated that there was bidding during [1068] that period?

A. That is——

Mr. Mitchell: Just a minute. If we are going to have the deposition brought in, perhaps we better have what he said. That isn't the proper way to do it.

The Court: I will sustain the objection.

Q. When you gave your pictures to these theatres on negotiation, did you negotiate with all three theatres for every picture, or would you negotiate

(Testimony of Lawrence W. Marriott.)

with one theatre for one picture and rotate the pictures?

The Witness: No. We negotiated with everybody.

The Court: For the pictures?

The Witness: Yes.

The Court: In other words, you had three negotiations for each picture?

The Witness: It could have been more than three. When I said three, the Southside was also involved in these arrangements. The Rio was also involved. In other words, we negotiated with all theatres in the Inglewood-Westchester area.

The Court: Well, I understand you didn't pick out one theatre and went and negotiated with that one theatre and ignored the other theatres?

The Witness: No, sir.

The Court: You brought them all in and negotiated [1069] with all of them?

The Witness: And got the best terms you could and that was the deal that you accepted.

Q. (By Mr. Corinblit): Now, Mr. Marriott, do your answers to the court's questions refer to the period from September, 1949 through March or April, 1950?

A. During that time, I stated that we were bidding. I was under the impression that we were. Since that time I have had a chance to look at the records and I find that bidding was discontinued in late 1949 and again bidding started in 1950, in April or May, somewhere in that time. But the informa-

(Testimony of Lawrence W. Marriott.)

tion I gave you was incorrect. But, as I stated, I checked the records and I find that what I am telling you now I am satisfied is the right information.

The Court: The question Mr. Corinblit asked you a moment ago as to the time, when I asked you the questions I did, I was referring to the time designated by Mr. Corinblit.

The Witness: 1949 to——

The Court: 1951.

The Witness: 1951.

The Court: That was the time you were referring to in your answers?

Mr. Mitchell: It was not 1949 to 1951. It was 1949 to March, 1950, that is what Mr. Corinblit asked.

The Witness: Yes. [1070]

The Court: That was the time you were referring to in your answers to me?

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Corinblit): Now, as I understand your answer, Mr. Marriott, you are stating that during the period from September, 1949 to about, as Mr. Mitchell states, March, 1950, you were negotiating, not with one theatre as the pictures came off, with one theatre and then another, but negotiating with both theatres, or three theatres?

A. All theatres in that area.

Q. Don't you know that in this case Mr. Pirosh of Fox has testified that during that period he and

(Testimony of Lawrence W. Marriott.)

Mr. Kupper would decide what theatre would negotiate with you for a particular picture?

Mr. Mitchell: I don't know that that was Mr. Pirosh's testimony, and I don't think it makes any difference whether this witness knows what Mr. Pirosh testified to.

The Court: Sustained.

Q. (By Mr. Corinblit): Do you deny that that was the fact, that in fact what happened was that Fox would negotiate with you for one picture, and the La Tijera would negotiate with you for another picture, and if the United Artists Theatre negotiated with you at that time, they would negotiate for another picture? You deny that? [1071]

A. I sure do.

Q. I want to show you, Mr. Marriott, a document which has been admitted in evidence—and we are to provide another copy which we have here—Exhibit 51. This Exhibit 51 is a cut-off card from your company, isn't that right?

A. That's right.

Q. For the series 681, right?

A. That's right.

Q. And this covers in part at least the period that you and I are now talking about, isn't that right? A. That's right.

Q. In the right-hand corner under the additional terms is a reference in your files, that is, in your company's files, "Bidding situation Inglewood first run," and a line drawn through it, and then

(Testimony of Lawrence W. Marriott.)

the words "split with Fox." What does this term "split with Fox" mean?

A. Split means a lot of things. Everybody interprets split in different manners. As far as I am concerned, split means the exhibitors can split the product amongst themselves. The exchanges can agree to a split, or a split can mean pictures that go to all theatres in that area, they don't go to just one theatre. They are split amongst all of them, whoever makes the best deal.

Q. Now, split is the equivalent of a division, isn't that right? Isn't that the way you interpret the word? [1072]

A. No, sir. I just explained to you how I interpret the word.

Q. Now, you are telling me that under this split—do you know who made this entry?

A. No, sir.

Q. This is in Universal's records.

A. Yes, sir.

Q. The person who made the entry was under your jurisdiction? A. That is true.

Q. Who was the person that ordinarily makes such entries? A. This a booking card.

Q. A booking card.

A. In our booking department, we have four bookers.

Q. And you would have given an instruction to make such an entry? A. No, sir.

Q. Would you have to send a memorandum to make such an entry? A. No, sir.

(Testimony of Lawrence W. Marriott.)

Q. What person in Universal would have been talked to with respect to that entry on that cut-off card?

Mr. Mitchell: Talked to by whom?

Mr. Corinblit: By anyone who arranged the split. [1073]

Mr. Mitchell: That assumes somebody arranged the split, your Honor.

The Court: Well, the split isn't made without somebody doing something. Somebody has got to do something.

Mr. Mitchell: Nobody has to do anything with Universal.

Mr. Corinblit: It got onto their records just by accident.

Mr. Mitchell: They put the pictures out and let the one have it that makes the highest offer for it. That is what Mr. Marriott said.

The Court: Here is another term you are using. Everybody understands what the term split means, but everybody has a different interpretation. I don't know. [1074]

The Witness: That is exactly what I stated.

Q. (By Mr. Corinblit): Now, on the 7-day availability pictures you were the man responsible generally for supervising the sale of pictures on 7-day availability at that time, were you not?

A. That is true.

Q. So that if there were negotiations between an exhibitor and Universal about 7-day availability at that time it was with you, is that right?

(Testimony of Lawrence W. Marriott.)

A. That is right.

Q. Now, you know that no sub—no person working under you has any authority to place any such entry in a cut-off card without first getting some authority from someone above him, don't you?

A. That isn't true.

Q. That is, the man who had this card if he wanted to, could just strike out "bidding" and put in "split with Fox," is that right?

A. He knew the bidding was discontinued.

Q. How did he know that?

A. He was informed of that.

Q. By whom?

A. By the—it would come through me.

Q. So that you did—it was your information that was used to draw this line through "bidding situation Inglewood [1075] area," right?

A. No, sir.

Q. Well, now, Mr. Marriott, you just testified that the information that bidding was discontinued came through you.

A. Yes, sir.

Q. And that that line drawn through "bidding" would have been drawn as a result of that statement from you to the individual?

A. That is partly true—that is part true.

Q. Now, how about the next entry, "split with Fox?"

A. That I know nothing about.

Q. Now, did you ever see this document before?

A. There is no reason why I ever look at cut-off cards, booking cards.

We have the sales department. We have our own

(Testimony of Lawrence W. Marriott.)

cut-off records which are maintained in the same manner as a booking card from the daily performances of pictures. For that reason the booking department is never taken from the booking department by anyone.

Mr. Mitchell: You said the booking department was never taken from the booking department.

The Witness: Booking card, booking card is never taken from the booking department because you never know when they may need it to book a situation and we can't be looking all over the office to see who has this record. [1076]

Q. (By Mr. Corinblit): What cards do you maintain that you use?

A. We have a cut-off which is a duplicate of the booking records.

Q. Where is that cut-off?

A. That I do not know.

Q. Is it in your office?

A. To my knowledge, no.

Q. Was it destroyed?

A. To my knowledge, yes.

Q. When? A. In August 19—last year.

Q. This case was pending at that time, was it not? A. Yes, sir.

Q. And you knew it was pending from 1951 on, didn't you? A. Yes, sir.

Q. And you were served with a copy of the summons and complaint, were you not?

A. That is right.

Q. Now, that document if we had it, could tell

(Testimony of Lawrence W. Marriott.)

us whether or not the entry "split with Fox" was on your record, wouldn't it? A. Certainly.

The Court: Mr. Corinblit, isn't this Universal?

Mr. Corinblit: Yes.

The Court: You say "on your records."

Mr. Corinblit: That is a Universal record.

The Court: You mean on Universal's records?

Mr. Corinblit: Yes.

The Witness: The duplicate record.

Q. (By Mr. Corinblit): Now, Mr. Marriott, it is a fact, is it not, that when exhibitors come in and discuss with you a matter of splitting a product with Fox you make a memorandum of such conversation, don't you? A. Sometimes.

Q. It is your practice to report to New York matters discussed with respect to deciding who is to get 7-day pictures in an area as important as this area? Do you report that to New York?

A. In negotiating deals?

Q. Yes.

A. I have the authority to make deals myself.

Q. And then you report them to New York for approval?

A. The deals that I make for approval.

Q. Where are the memoranda covering this period?

A. As I have stated before, not only this memorandum but many memorandums were destroyed last year when our exchange moved to a new headquarters.

We moved to a new building at 2001 South Ver-

(Testimony of Lawrence W. Marriott.)

mont. Our [1078] old quarters have been maintained for a number of years.

At that time we had an auditor from our home office by the name of Mr. John Rickets who came into the office and destroyed a lot of records, which we are sorry they are gone. We wish we had them ourselves today.

Mr. Corinblit: Counsel, would you produce for me those records of Universal which you do have?

Mr. Johnston: They have been produced for you.

Mr. Mitchell: They are here. They are already produced. I don't like the implication of counsel, "You produce for me these records." These records have been produced for counsel for a long time and have been here in court so that he could use them. We don't have to produce them.

Mr. Corinblit: There is no contention that these documents haven't been available at all times.

Mr. Mitchell: We don't have to produce them. They are here.

Mr. Corinblit: I will withdraw that statement. I have never seen these documents before.

Mr. Mitchell: That is your fault.

The Court: They were available?

Mr. Bakaly: They have been available for weeks, Mr. Corinblit, and you were told they were here.

Mr. Corinblit: I deny that.

Counsel, I would request of you the originals of the [1079] letters from Mr. Schreiber to Universal.

Mr. Mitchell: All the papers that we know anything about involving Universal are either on your

(Testimony of Lawrence W. Marriott.)

table there or have been marked as exhibits. We don't know any others involving this case.

Mr. Corinblit: When you say you don't know, you mean to say you don't have any others?

Mr. Mitchell: That is right.

The Court: You don't know about any others and haven't any others?

Mr. Mitchell: That is right. We have attempted to locate all documents that would be material to this case and those that we thought were material we have had marked as exhibits and everything has been made available to counsel.

Mr. Corinblit: I don't want to quarrel with the statement but I am asking for the originals of the letters which were produced for me by Mr. Bakaly. If you check with Mr. Bakaly I think you will find that to be correct.

Mr. Mitchell: It is my error. There are some we had here—the Syd Lehman letter. Is that the one you are looking for?

Mr. Corinblit: Yes. That is what I am looking for.

Q. (By Mr. Corinblit): Now, so we get it clear, the document I have in front of me here that has been produced by counsel, does not include any correspondence other than the [1080] papers that I have in my hand and that you have just given me, is that correct?

Mr. Mitchell: I will have to look. I don't know why you don't go on. What is the difference if

(Testimony of Lawrence W. Marriott.)

you want to examine the witness? I don't want to be examined in this case.

Q. (By Mr. Corinblit): Now, Mr. Marriott, I want to show you some original letters written by Mr. Syd Lehman to Universal which have been produced from your company's files.

They cover a period from March 26th to May 18, 1951.

Mr. Corinblit: And I will ask your Honor at this time that these documents be admitted into evidence and we will provide copies of the documents.

The Court: They may be marked and received.

The Clerk: Exhibit 52 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 52.)

Q. (By Mr. Corinblit): Now, Mr. Marriott, I want you to tell me again when the auditor from New York destroyed the records of Universal.

The Court: Some of the records.

Mr. Mitchell: Some of the records. We have the contracts here and the pertinent things.

Q. (By Mr. Corinblit): When did the auditor in New York destroy some of your records?

A. He was in our exchange in July last year, July of [1081] 1955 through the opening of our exchange, which was in the middle of August, 1955.

During that period, before we moved into the new headquarters, he is the man who destroyed a lot of records.

Q. (By Mr. Corinblit): Now, Mr. Marriott, can

(Testimony of Lawrence W. Marriott.)

you describe for me the documents, the class of documents, that were destroyed in July of 1951?

A. No, sir, I don't know all that was destroyed.

Mr. Mitchell: You mean in July of 1955.

Mr. Corinblit: Yes, July, 1955. Thank you. I am sorry. I didn't hear your answer.

The Witness: I say I don't know all the documents that were destroyed. I didn't destroy them so I don't know.

Q. (By Mr. Corinblit): Now, the records, the correspondence that you have in front of you that have been marked as Plaintiff's Exhibit 52—

A. Yes, are original records from Universal's files during the period March 26 to May 18.

Q. Now, can you tell me how it was that these documents were preserved and the documents or any memoranda or correspondence relating to any split with Fox, any discussions with exhibitors were destroyed?

Mr. Mitchell: That assumes there were memoranda on "split with Fox" or discussions with exhibitors. I object to it on the ground it forces the witness to answer a question [1082] to something that is not in evidence.

The Court: Objection sustained. This witness says he doesn't know which records were destroyed.

Q. (By Mr. Corinblit): Now, Mr. Marriott, in 1949 when you were, as you testified to, when you were negotiating for 7-day pictures, do you remember that when you negotiated with the La Tijera Theatre that you negotiated to permit the

(Testimony of Lawrence W. Marriott.)

La Tijera Theatre to play simultaneously with the Imperial Theatre?

A. That isn't true. When you negotiate for a picture you negotiate picture by picture and theatre by theatre.

Q. Now, when you negotiated with the La Tijera you ultimately ended up negotiating day and date in the Imperial?

A. That probably was—no doubt they either received the best offer or there was nothing else available, but it was at least the best offer that I could secure in that area.

Q. But you did—Universal did permit the exhibition of your pictures on a 7-day availability day and date in the La Tijera Theatre located here and the Imperial Theatre located here, is that correct?

A. That is right.

Q. It has been stipulated to in this case, Mr. Marriott, that that distance is approximately five miles.

Mr. Westbrook: My record, counsel, doesn't indicate we have a stipulation to that mileage. I will be glad to check [1083] it.

Mr. Corinblit: I think that you will find you obtained that mileage and it was stipulated to.

The Court: May I ask the witness a question?

Mr. Corinblit: Yes.

The Court: You say your pictures were allowed to play day and date with these two theatres.

In your opinion were they in substantial competition with each other?

(Testimony of Lawrence W. Marriott.)

The Witness: It all depended on our pictures. In other words, in selling our pictures at times we don't have all these top pictures that everybody else blows off about that they are the top guys, and so forth.

We don't profess to have the block-busters and all that with the exception of maybe one or two a year. Sometimes we don't have any. And then when it comes down to our pictures it is a matter of disposing of our pictures which many a time are used as a companion picture, which means the second feature, but there are a lot of times, as I state we make good pictures, but—and there are many times that an exhibitor didn't have our pictures as a companion picture and he might not do so well on the top picture because a lot of times the top picture on which they spend a lot of money to make—it costs all the way from a million, two million, three million, they say. Sometimes they are a flop or a bust at the boxoffice [1084]² and a lot of the time the patrons who come out from the theatre will say to the manager or the doorman, "My, that was a fine second picture," whatever it might be. So they go home satisfied and well pleased.

We get the small end of the money and the guy who has the big block-buster he gets the big percentage and he thinks he has done a great job where it is a case where we feel we have done the good job because we know that to be a fact. We hear that and we also have previews. We have all these shows that they describe. We see the comments

(Testimony of Lawrence W. Marriott.)

from the patrons and we know when the patrons put on there some of the words you couldn't describe in court—they would probably toss you out, but there are other words you can say on there—"excellent, good," and even sometimes they go in advance and state that a picture, as I stated, your class of picture—they liked it but didn't like the other one, of course, the so-called big companies don't like that. [1085]

The Court: Let's get back to my question.

The Witness: All right.

The Court: You know what substantial competition is, don't you?

The Witness: Yes, most assuredly I do.

The Court: Did you consider these two theatres in substantial competition at this particular time?

The Witness: I did consider them in substantial competition, yes.

The Court: All right. That's all I wanted you to say.

Q. (By Mr. Corinblit): Now, Mr. Marriott, when you negotiated with Fox for 7 day pictures, at this time do you remember whether Fox played pictures simultaneously with other theatres in the area?

A. I don't remember, but I would say that there was occasions when they did.

Q. There might have been an occasion when Fox played simultaneously between the Academy and the La Tijera Theatres, isn't that right?

A. That could be.

(Testimony of Lawrence W. Marriott.)

Q. And certainly there were many occasions—I will withdraw that.

There were occasions when the Academy played day and date with the Southside Theatre? [1086]

A. I think that's right.

Q. And there were occasions when the Academy played day and date with the Fifth Avenue Theatre? Did that happen?

A. The Academy and Fifth Avenue, no, that couldn't be.

Q. All right.

A. You can spit from one to the other.

Q. Now, were the Academy Theatre and the Southside Theatre in substantial competition?

A. In my opinion, yes.

Q. When Mr. Schreiber in February and then in April asked for 7 day pictures, Universal, your company, refused to permit him to negotiate for 7 day pictures, is that correct?

Mr. Mitchell: Now, that assumes a fact not in evidence. This witness says he doesn't know about any asking for pictures in February, so to ask him that double-barreled question puts him in the position of answering something that is not in evidence. I object to it on that ground.

Mr. Corinblit: Now, your Honor, that is not correct. I read the letter dated February 6, 1950, of which the witness stated he received a copy that is addressed to him.

The Court: Overruled.

(Testimony of Lawrence W. Marriott.)

Mr. Mitchell: That didn't say anything about 7 day pictures. That says first run.

Mr. Corinblit: That is correct. [1087]

Mr. Mitchell: Then the question asked the witness to answer something that is not in evidence.

The Court: This witness, I think, can take care of himself on the witness stand.

Q. (By Mr. Corinblit): Limiting the question, Mr. Marriott, to 7 day pictures, it is a fact when the Paradise asked Universal for 7 day pictures in the spring of 1950, your company refused to negotiate with the Paradise for 7 day pictures, that is correct? A. Well——

Q. In the spring of 1950.

A. In the spring of 1950?

Q. Yes, sir.

A. What was there to negotiate? His house wasn't open at that time.

Q. You told him, however, that you would not negotiate? He was told that by your company, isn't that correct?

A. You just read the evidence, that's right.

The Court: Now, may I ask this witness a question?

Mr. Corinblit: Yes, sir.

The Court: Do you negotiate for a picture before a theatre is completed?

The Witness: No, sir. There is no use. That is, when I say before the theatre is completed, within a period of time of a week, two weeks, when the theatre knows he is [1088] going to open. But

(Testimony of Lawrence W. Marriott.)

the evidence that was read this morning, Mr. Schreiber was going to open his theatre in May, as I recall, and if I am correct on my dates, the theatre didn't open until August, and if he had bought pictures, your Honor, anticipating he was going to play them in May, he would have been a little bit backed up on pictures. He would have been worse off than Mr. Pirosh stated he was in his Inglewood Theatre, where he plays old pictures. He would have had the same class of house.

Q. (By Mr. Corinblit): Mr. Marriott, my question is this. I realize the theatre wasn't opened. The question is, did your company tell Mr. Schreiber in the spring of 1950 that you would not negotiate for 7 day pictures?

Mr. Mitchell: Your Honor, the evidence is here in the form of a letter.

The Court: I think the letter speaks for itself.

The Witness: That's right.

Mr. Mitchell: That's right. Bidding was going on then and they offered him the opportunity to bid.

The Court: The letter speaks for itself.

Well, I notice it's 11:00 o'clock. We will take a recess and you read the letter.

Mr. Corinblit: Yes, sir.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish [1089] you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of

(Testimony of Lawrence W. Marriott.)

the parties until this case is finally submitted to you.

With that admonition, we will now recess until 15 minutes after 11:00.

(Recess.)

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

Q. (By Mr. Corinblit): The letter to which we are referring, Mr. Marriott, was the Exhibit 14-F in evidence in which Universal states that they will provide bidding between the Paradise and the Inglewood Theatres. Just to get this absolutely clear on the record, I think you testified to this, but I want it absolutely clear, Universal did provide 7 days on bid. It would not provide it on any other terms at that time, correct? A. At what time?

Q. In May, 1950, 7 days.

A. Thereabouts, that's right.

Q. So it would not provide it on a negotiated basis at that time? [1090] A. That's right.

Q. Subsequently a letter was sent by Mr. Simon to Mr. Landau, May 24, 1950, which is Plaintiff's Exhibit 14-G, which we will now offer in evidence.

The Court: It may be received in evidence.

The Clerk: 14-G.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 14-G.)

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Marriott, Mr.

(Testimony of Lawrence W. Marriott.)

Feldman at the time of this letter was eastern district manager at that time, 1950, or was he sales manager?

A. He no doubt was eastern sales manager in 1950.

Q. And that same Mr. Feldman had been for many years branch manager in Los Angeles, is that right? A. That is right.

Q. And thereafter he had been district manager in Los Angeles? A. That is right.

Q. And he is now the general sales manager for Universal and a vice president of that company?

A. That is right.

Mr. Mitchell: So as to keep the continuity, can we have the reply to that?

Mr. Corinblit: Yes. The letter to which Mr. Mitchell refers is a letter dated June 2, 1950, from Mr. Landau to Mr. Simon with copies to Scully, O'Keefe, Schimel, Blake, Marriott and Rose.

We will offer that exhibit as Plaintiff's Exhibit 14-H.

The Court: It may be received in evidence.

(The exhibit referred to was marked Plaintiff's Exhibit 14-H, and received in evidence.)

* * * * *

Mr. Corinblit: And following that is a letter dated June 7, 1950, from Simon to Landau which the plaintiff will offer as Plaintiff's Exhibit 14-I.

The Court: It may be received.

(The exhibit referred to was marked Plain-

(Testimony of Lawrence W. Marriott.)

tiff's Exhibit 14-I, and received in evidence.) [1096]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Marriott, so we can get this clear, I think you testified before that your company took the position—your company played day and date on some pictures between the La Tijera and Imperial and they were about five miles apart.

Your company also played day and date between the Academy Theatre and the Southside Theatre. The Academy Theatre and the Southside Theatre, I think we have the distances on that. I will take it again, if you want to tell me. [1097]

Mr. Westbrook: 3.6 miles.

Mr. Corinblit: 3.6 miles.

Q. And I think you testified it was the opinion of your company that the Academy and the Southside were in substantial competition, correct?

A. That is right.

Q. Now, you notice that Universal refused the Paradise the privilege of playing day and date on the grounds that the Paradise and the Inglewood theatres were in substantial competition, isn't that correct?

A. No, it isn't correct. I think the Paradise Theatre played some pictures day and date.

Q. Now, it is not your testimony, is it, that you offered—that your company at that time offered to negotiate with the Paradise Theatre for day and date availability in that area? A. No.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: Plaintiff will next offer in evidence Exhibit 14-K with the same provision. We offer the entire letter but your Honor has heretofore ruled a sentence out, and therefore we will only ask to read to the jury the portion of the letter with that sentence excluded.

Mr. Mitchell: Hasn't this letter already been read once to the jury?

Mr. Corinblit: The letter to Metro, but not the letter [1098] to Universal.

The Court: It may be received.

(The document referred to was marked Plaintiff's Exhibit 14-K, and was received in evidence.)

Mr. Corinblit: This letter reads as follows. It is dated August 22, 1951, and is addressed to Universal in Los Angeles:

"Gentlemen:

"Southside Theatre, who is operating the Paradise Theatre in association with the undersigned, has informed me that your local exchange has taken the position that the Paradise Theatre is in substantial competition to the Academy and that the Academy will require clearance over the Paradise."

Q. May I stop there for a moment, Mr. Marriott. That statement is correct, is it not, that the Academy Theatre required clearance over the Paradise? A. When?

Q. In August and September, 1950?

A. 1950?

Q. Yes. A. If he bought the picture?

(Testimony of Lawrence W. Marriott.)

Q. Yes. A. If he asked for clearance?

Q. Yes. [1099] A. No doubt he did.

Q. And Universal gave it to them?

A. If he paid enough money we gave it to him, yes.

* * * * *

Q. What is your—what was your company's official definition of "substantial competition" in 1950, if you know?

A. Substantial competition means that whatever theatres in the area they draw from the same vicinity and the same patronage. [1100]

Q. And in that connection what is the meaning of the word "substantial—" what was the meaning of the word "substantial"?

A. Substantial in my opinion covers it all over, covers the entire area.

Q. That is, they are in substantial competition with respect to the entire area. Is that what Universal—is that the meaning that Universal had?

A. That is my interpretation of the theatres in that area, yes, sir.

Q. Now, was that statement that you just made the position of Universal, if you know?

A. Well, I don't know.

The Court: Mr. Marriott, do you have competition relative to an area or do you have competition relative to the people in the area?

The Witness: To the people in the area.

The Court: People in the area?

The Witness: Yes.

(Testimony of Lawrence W. Marriott.)

The Court: So when you are talking about substantial competition within an area, you are talking about the people within that area?

The Witness: That is right.

Q. (By Mr. Corinblit): Now, did you have any opinion in 1950 as to how much the Academy Theatre would have been [1101] effected if the Paradise Theatre had been permitted to play day and date with the Academy? A. No.

Q. Did you have any opinion as to how much the La Tijera Theatre would have been effected by the Paradise, if the Paradise would have been permitted to play day and date with the La Tijera?

A. No.

Q. Did you have any such opinion with respect to the effect of the Paradise playing day and date on the Fifth Avenue or the Southside?

A. No.

Q. You had no such opinion at that time?

A. No.

Q. Now, this matter of substantial competition was not discussed by you with your superiors at that time either, was it? A. I don't think so.

Q. And when the Paradise Theatre—when the Paradise Theatre asked for a 7-day availability you didn't discuss with your superior the subject or any substantial competition that may or may not have existed between the Paradise and any other theatre in the area? A. That wasn't discussed.

Q. Now, when you say that you didn't have any opinion [1102] as to how much the Academy's busi-

(Testimony of Lawrence W. Marriott.)

ness would have been effected by the Paradise Theatre playing simultaneously, that is, you didn't have an opinion one way or the other even with respect to one per cent of it, isn't that right?

A. That is right.

The Court: When you say these theatres were in substantial competition on what do you base your conclusion?

The Witness: Well, as I stated, your Honor, many of our pictures—we don't receive the high percentages. Our pictures are usually used as a second feature and for that reason Universal has always—we sell our pictures not only in this area or this community but others as well, and if this happens to be the second feature—lots of times they are in demand and if we sell one man a run on a picture, maybe his fellow man down the street so far away—when I say “so far away” I mean three miles or whatever it might be, he may be in dire need of a picture. If the first man who we have sold our picture to and gives us the okay that we can also sell another man after he has been given clearance over that house, we then negotiate a deal.

The Court: You only gave clearance over theatres in substantial competition, didn't you?

The Witness: That's right.

The Court: You say these theatres are in substantial competition?

The Witness: That's right.

The Court: On what do you base that conclusion?

(Testimony of Lawrence W. Marriott.)

The Witness: We base the substantial competition on the same people in the same area, where they draw their patronage from.

The Court: All right. You just got through saying you didn't know how many patrons would be drawn from these different areas.

The Witness: I don't know how the business would be split. I can't tell that.

The Court: Do you base your conclusion of substantial competition on distance only, that is, you put an arbitrary figure that a theatre within two miles is in substantial competition?

The Witness: On our new plan which we have—we change our policy quite often, too—with the new plan we have, it is substantial competition by mileage.

The Court: By mileage?

The Witness: By mileage.

The Court: But it was not in 1950? [1104]

The Witness: In 1950, no.

The Court: What was the basis of substantial competition in 1950? What was your yardstick in 1950 to determine substantial competition?

The Witness: My yardstick, as I stated your Honor, is in two theatres, the La Tijera and the Paradise, we will say, and the Academy—they all draw patronage from the Inglewood area so that, therefore, they are in competition.

The Court: How do you know they do? Did you ever make a survey?

The Witness: No, I haven't made a survey, but

(Testimony of Lawrence W. Marriott.)

that is the general practice I will say. That is just the picture business. That is the only way I know how to explain it to you.

The Court: All right.

Q. (By Mr. Corinblit): Mr. Marriott, you have this morning in your answers to Judge Westover's questions, and something you said earlier, been telling the court and the jury that Universal pictures were pretty bad pictures in 1950. A. No, sir.

Q. Did you mean to say that?

A. No, sir, I didn't tell you that Universal pictures were bad pictures. I said Universal pictures are good pictures, but we don't have the big blockbusters, and there are even many a time our pictures satisfy the customer and the [1105] audience, the patronage, better than some of the so-called big pictures.

I am not a man who goes out and names my competitors' pictures. I know which ones do the big business and which ones gross a lot of money, one million, two million, three million. A lot of times they don't even get their costs out of their pictures. I know that. We make low budget pictures mostly.

Q. You had pictures in 1949, 1950 and 1951 that did great grosses, didn't you?

A. When you say great grosses——

Q. I mean grosses that are comparable to these other companies you are talking about.

A. Maybe that is a matter of selling. Maybe that is a matter of salesmen that we have working for our company. Maybe we do a better job than some

(Testimony of Lawrence W. Marriott.)

of these other companies do. Universal has always had the reputation of having a fine sales organization. We don't miss many dollars.

Q. As a matter of fact, in 1949 and 1950, Mr. Marriott, you had a picture—you had two pictures that grossed over a million dollars. You had a picture that grossed much more, over two million dollars. You had a picture that grossed a million eight; you had a picture that grossed a million three; two million one, one million nine, one million two, two million, one million three, one million, [1106] one million one, two million three, a million three. Does that sound right to you as far as the caliber of Universal pictures that you were distributing in 1949, 1950 and 1951? These are national grosses.

A. National grosses. That sounds right, but you tell me what that has to do with it?

Q. I thought you had been telling the court one of the reasons you have a different approach with regard to substantial competition, the definition, is that you don't have pictures that gross very much.

A. I didn't say that.

The Court: Well, if you have a picture that costs three million today and you gross a million dollars, that picture isn't any good. If you have a picture that cost five hundred thousand today and you gross a million, then it is a good picture.

Mr. Mitchell: I doubt that, because it would cost more than that to distribute the picture. You have got to make much more than that. It has to be more than a million to be any good.

(Testimony of Lawrence W. Marriott.)

The Court: Maybe the money is in the distribution of it. I don't know. It may not be in the making, but in the distributing.

Q. (By Mr. Corinblit): As a matter of fact, Mr. Marriott, in 1950 insofar as Universal had any basis for [1107] talking about substantial competition, it was really based on a guess or a hunch, wasn't it?

A. If you want to call it that. [1108]

* * * * *

Mr. Mitchell: Will you stipulate that letter was drawn by Seymour Simon, an attorney?

Mr. Corinblit: Yes, sir. I will stipulate it was drafted by counsel together with client.

Q. Now, Mr. Marriott, in fact during the period from August 1950, when the Paradise Theatre opened, to October—we can take it to November 1950, Universal did not license to the Paradise a single 7 day picture, is that correct?

Mr. Westbrook: Counsel, the second picture at the Paradise Theatre was a 7 day picture, The Desert Hawk, which was Universal.

Mr. Corinblit: You are right.

Q. Other than the picture Desert Hawk, you did not license the Paradise any 7 day picture, isn't that correct? A. I presume so.

Q. Now, on the picture Desert Hawk on the 7 day availability, you licensed that picture simultaneously with the Imperial Theatre, the Paradise located here and the Imperial Theatre at this point (indicating), is that correct?

(Testimony of Lawrence W. Marriott.)

A. I presume so. [1110]

Q. You never during that period licensed a 7 day picture simultaneously with the Fox West Coast Academy Theatre, did you?

A. Repeat that question.

Q. You never during that period from August to November 1950 licensed the Paradise a picture on a 7 day availability simultaneously with exhibition in the Academy Theatre, did you?

A. I don't think so.

Q. As a matter of fact, turning now to the period roughly from April 1951 to September 1951, Universal did not license to the Paradise Theatre a single 7 day picture, isn't that correct?

Mr. Mitchell: Wasn't that when they were playing the 21 day availability?

Mr. Corinblit: No, sir.

The Witness: I presume that's right. I don't recall.

Q. (By Mr. Corinblit): And during that period, that same period of time, you were licensing from time to time your pictures on a 7 day availability to the Academy Theatre, were you not?

A. As well as other theatres in the Inglewood-Westchester area.

Q. But not including the Paradise Theatre?

A. You are talking about 1950?

Q. Now I am talking about after the first picture in the first month, any picture during the period August to November 1950, or April to September 1951. I think you have already testified there

(Testimony of Lawrence W. Marriott.)

were no pictures licensed to the Paradise Theatre on the 7 day availability.

A. I presume that is right.

The Court: What happened to the other period? You have got a blank there.

Mr. Corinblit: Yes, sir. We will go into that now.

Mr. Mitchell: The Paradise won't bid.

The Witness: That is right. I know the answer.

Mr. Mitchell: They won't bid.

Mr. Corinblit: Now, your Honor, let's not have an argument by counsel. [1112]

The Court: Now, let us find out what happened in the interval. We have an interval here.

Mr. Corinblit: Yes. We are coming to that.

Q. (By Mr. Corinblit): Now, Mr. Marriott, after the Paradise had sought to purchase 7-day pictures from your company during the period—well, they opened the discussions as early as May 1950, but attempted to purchase pictures on the 7-day availability through November or early December of 1950.

Did you have a discussion with Mr. Schreiber concerning availability of pictures in the Paradise?

A. As I stated, you have given me so many dates, but as I stated before, during 1949, during the latter part of 1949 to the early part of 1950 we was negotiating for pictures. Bidding was discontinued. In 1950 on bidding was instituted again in the Inglewood-Westchester area and the opportunity was given to the Paradise Theatre to bid for the pictures on a 7-day availability.

(Testimony of Lawrence W. Marriott.)

I hope that covers the dates. I can't remember them all.

Q. Now, do you know anything about the Paradise playing on a 21-day availability—Universal pictures. Do you know anything about that?

A. As I recall, there was one period of time, and I believe that Mr. Lehman at that time—I don't remember whether it was Mr. Lehman at that time or who that was doing [1113] the buying at that time, stated they were going to play pictures on a 21-day availability due to the fact they could get a clear run without bidding.

Now, I am not positive of when the time was.

Q. All right. Now, would you, with respect to bidding, and I am speaking of Universal, would you describe for the court and the jury the theatres that you required the Paradise to bid against to obtain 7-day availability? What were the theatres?

A. The theatres was the Paradise, La Tijera—

Q. Yes? A. —Fox Inglewood.

Q. Yes, Fox Inglewood.

A. United Artists Inglewood.

Q. Yes? A. Ritz Theatre Inglewood.

Q. Ritz, yes. A. Inglewood of Inglewood.

Q. Right. A. Academy, Inglewood.

Q. Just a moment. Academy Theatre Inglewood? A. The Rio, the Southside.

Q. Just a minute. The Rio? A. Yes.

Q. The Southside? [1114]

A. Southside and Fifth Avenue.

Q. And the Fifth Avenue? A. Yes.

(Testimony of Lawrence W. Marriott.)

Q. Those were the theatres——

A. That was the hard-top theatres.

Q. All right. Now, it was not your opinion, was it, that the Paradise was in substantial competition with the Southside Theatre?

A. They still are. I wouldn't say substantial. There is still competition but it is quite a distance from the Paradise. One is on each side of the boundary of the two areas of the Westchester-Inglewood area.

Q. You wouldn't say that they are in substantial competition, that is, the Paradise and the Southside?

A. No, I wouldn't say there is substantial competition.

Q. But the company did require the Paradise to bid against the Southside? A. That is right.

Q. And if the Southside got the picture under the bid, if Paradise had bid under these circumstances, the Southside would have had a right to play the picture ahead of the Paradise?

A. It has prior run, yes.

Q. Now, you required the Paradise to bid against the Academy Theatre? [1115]

A. That is right.

Q. Now, that was the Fox-West Coast Theatre?

A. Yes, sir.

Q. And what was your opinion about substantial competition between those two theatres?

A. I think there was substantial competition.

Q. If the Academy Theatre won the bid under

(Testimony of Lawrence W. Marriott.)

the system you had set up it would get as a matter of right the priority of run over the Paradise, is that correct? A. That is right.

Q. Now, as a matter of fact, your company in 1950, had no policy against licensing a picture to a theatre and then giving clearance over theatres that were not in substantial competition, did it? Do you understand my question? A. I don't.

Q. All right. As far as Universal was concerned, it was all right with Universal if they licensed the picture to one theatre and then gave clearance over another theatre, even though those two theatres were not in substantial competition, isn't that right, in 1950?

A. I still don't understand your question, what you are trying to arrive at.

Q. I am asking, Mr. Marriott, about Universal policy. A. I understand that.

Q. All right. It was agreeable to Universal policy in [1116] 1950 and '51 to license a picture to one theatre and then grant clearance of that theatre over another theatre even though Universal recognized that the two theatres were not in substantial competition. Isn't that right?

A. We done that, yes.

Q. I want to call your attention, Mr. Marriott, to an incident—first let me go back to the period beginning March 26, 1951.

We will offer in evidence as Plaintiff's exhibit next in order, as Plaintiff's Exhibit 15-M, a letter from Lehman to Marriott dated March 26, 1951.

(Testimony of Lawrence W. Marriott.)

The Court: It will be received in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 15-M.) [1117]

* * * * *

Q. (By Mr. Corinblit): Now, do you remember receiving that letter, Mr. Marriott?

A. I imagine so.

Q. Now, subsequently you informed Mr. Lehman that you would not negotiate with him for pictures on a 7-day availability and he would not be able to obtain pictures unless he were to bid against the theatres you have described, isn't that correct?

A. That is right.

The Court: May I ask a question?

Mr. Corinblit: Yes, your Honor.

The Court: How far is the Southside Theatre from the Paradise Theatre, Mr. Westbrook?

Mr. Westbrook: We haven't been able to agree on that, your Honor. We are trying to get the mileage. I think what the trouble is that we have taken different routes— [1119] different routes are involved, but we will come up with a figure.

The Court: Did you consider the Southside Theatre in substantial competition with the Paradise?

Mr. Corinblit: He said "No," I think, your Honor.

The Court: You said "No," didn't you?

The Witness: Well, if I did say no, I was confused in my answers again, because all the theatres, as I stated, they are all competition.

(Testimony of Lawrence W. Marriott.)

The Court: Well, do you consider all these theatres in substantial competition with one and another?

The Witness: In the area?

The Court: In the area.

The Witness: Yes, Inglewood area, the theatres I named.

The Court: Even though Southside is on one side of Inglewood and Paradise is on the other side of Inglewood, you still consider them in substantial competition?

The Witness: I would. [1120] * * * * *

Q. (By Mr. Corinblit): Mr. Marriott, earlier this morning you testified that in your opinion, Universal's opinion, the Paradise and the Southside were in substantial competition, and then at the end of the morning, you stated to the court that you misspoke yourself and you wanted to change your testimony to the effect that it was the opinion of Universal that they were not in substantial competition, is that correct? In other words, your testimony now is that they were in substantial competition, is that right?

A. That they were in substantial competition, yes.

Q. Do you remember, Mr. Marriott, that you gave a deposition [1122] in this case?

A. Yes, sir.

Mr. Corinblit: Is the original on file of the deposition?

Mr. Mitchell: No.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: Could we let the witness have a copy so that I can stand at the lectern and use my own copy?

Mr. Johnston: Take mine.

Q. (By Mr. Corinblit): I will place in front of you, Mr. Marriott, a copy of your deposition.

I ask you to turn to page 42 of your deposition—
incidentally, Mr. Marriott, have you read your deposition? A. Yes, sir.

Q. Are there any changes you want to make in it? A. I don't think so.

Q. Now, let me ask you this. In fact, was it the position of Universal as to the matter of substantial competition between the Paradise and the Southside that you treated them as if they were in substantial competition if the Southside asked for clearance over the Paradise, and you treated them as if they weren't in substantial competition if the Southside didn't ask for clearance, is that right?

A. Well, there is really no clearance in this area. This is a priority run.

Q. Have you finished with that answer? [1123]

A. That's right.

Q. Would you answer my question, whether or not it is a fact that in 1950 and 1951, if the Southside asked for clearance over the Paradise, Universal would treat them as being in substantial competition. If Southside didn't ask for clearance, they would not treat them as being in substantial competition. Is that right?

(Testimony of Lawrence W. Marriott.)

A. They would still have the prior run.

The Court: Well, you know what substantial competition is?

The Witness: Yes.

The Court: Did you consider these two theatres in substantial competition?

The Witness: Yes, sir.

The Court: Regardless of whether it came from Southside to Paradise or Paradise to Southside, they were still in substantial competition.

The Witness: Correct.

Q. (By Mr. Corinblit): The same thing is true with respect to the Academy? A. Correct.

Q. Well, now, I ask you to look at page 42 of your deposition, line 6, and the answer at line 9.

“Q. Mr. Marriott, was it the position of Universal in 1950 and 1951 that the Paradise [1124] Theatre was in substantial competition with the Southside Theatre?

“A. It all depended on the bidding. If the Southside would request clearance over all bidders, they would be granted that.

“Q. In other words, if the Southside would request clearance over the Paradise, as a result of that request you would treat those theatres as being in substantial competition with each other?

“A. And the same opportunity would be given to the Paradise if he bid on the picture and asked for clearance over the Southside.

“Q. And if the Southside did not request clear-

(Testimony of Lawrence W. Marriott.)

ance over the Paradise, then Universal would not treat the two theatres as being in substantial competition with each other, is that right?

“A. That is true.”

Now, were you asked those questions and did you give those answers?

A. What was the last part?

Q. Were you asked those questions and did you give those answers? A. I am sure I did.

Q. Were your answers true at the time?

A. They were true in the way that I maybe understood [1125] it, but, as I stated before—as I have stated now, the theatres that you ask questions, the Paradise, Southside, Academy, and so forth, they are all in competition. [1126]

Q. But you said in this deposition, Mr. Marriott, that if the Southside did not request clearance then Universal would not treat the two theatres as being in substantial competition. That is what you said? A. Yes, sir.

Q. Now, was that answer true?

A. It is a matter of understanding the interpretation.

The Court: You can answer the question yes or no and then you may explain your answer. The question was, was it true.

The Witness: I don't know how to answer. I presume I would have to say yes.

The Court: All right. Now you may explain your answer if you care to.

(Testimony of Lawrence W. Marriott.)

The Witness: If a picture was awarded to the Southside on a negotiated deal or a bid for the 7-day availability, and if there was no request made that they play ahead of any theatre, then we were at liberty to negotiate another deal with some other theatre in the same area to play with this theatre.

Q. (By Mr. Corinblit): And it was perfectly all right with Universal to play day and date between the Southside and the Paradise so far as Universal was concerned? A. That is true.

Q. Now, turning to the Academy Theatre. If the [1127] Academy didn't ask for clearance you would treat the theatres as not being in substantial competition, is that right?

A. No, sir, I didn't say that. I didn't mean that if I said that.

Q. Look at page 43. A. All right.

Q. Of your deposition. Look at the question on line 4 and the answer on line 6.

A. All right.

Q. Now, were you asked this question:

"Q. If they didn't ask—referring to the Academy—"If they didn't ask for clearance you would treat the two theatres as not being in substantial competition. "A. That is right."

Mr. Mitchell: Read the next question and the next answer.

Mr. Corinblit: "Q. Did you have any idea what the words 'substantial competition' meant in '50, '51?

(Testimony of Lawrence W. Marriott.)

"A. Well, all theatres were in competition to one another. A picture played in the Southside and played in the Paradise, it could affect the grosses in both theatres.

"Q. Did you have an opinion as to how [1128] much the Southside's business would be affected if played day and date with the Paradise?

"A. No.

"Q. Did you have an opinion as to how much the Academy's business would be affected if it played day and date with the Paradise?

"A. No.

"Q. Did you have any opinion as to how much the business of the Fifth Avenue would be affected if it played day and date with the Paradise?

"A. No.

"Q. Did you have an opinion as to how much the business of the La Tijera would be affected if it played day and date with the Paradise?

"A. No.

"Q. Now, in your opinion, could the effect on the Southside have been as little as 1 per cent?

"A. I wouldn't give any amount. I don't know.

"Q. You didn't know at that time?

"A. No." [1129]

Q. Now, Mr. Marriott, were you asked those questions and did you give those answers?

A. That is right.

Q. And were all those answers true?

A. As I understood it at the time, yes.

(Testimony of Lawrence W. Marriott.)

The Court: I would like to go back and ask this witness a question that I asked this morning.

In 1950 and 1951 what did you base, what yardstick did you use to determine whether theatres were in substantial competition?

A. Well, in the Los Angeles area—in the Inglewood-Westchester area——

The Court: Any area. I don't care what area you take, what was your yardstick?

The Witness: Well, I am afraid that it is different in some areas in the manner in which it is set up.

The Court: Let us take a community in which there are four or five different theatres.

The Witness: Yes, sir.

The Court: And they are distant 1 to 10 miles. Do you base your definition of substantial competition on mileage?

The Witness: In 1950 and '51 I don't think we used mileage. In fact I am sure we didn't use mileage.

The Court: Then what did you use?

The Witness: We used a community—the best that I know [1130] how to explain it is the Inglewood-Westchester community. In other words, the theatres all in that same area must draw the people from—the biggest majority of them from the boundaries of that area, which the boundaries of that area are pretty large in my opinion.

The Court: Then you would say because these

(Testimony of Lawrence W. Marriott.)

theatres were in that particular area they had to be in substantial competition?

The Witness: I would say that is how it was set up.

Q. (By Mr. Corinblit): Now in your deposition, Mr. Marriott, you said that you couldn't give any amounts as to how much one theatre would affect another? A. That is correct.

Q. You don't know whether it is 50 cents—you didn't know whether it was 50 cents or \$50?

A. I still don't know.

Q. Now, it was on the basis of the fact of this statement to the Paradise Theatre that they were in substantial competition as you have testified about today, that the Paradise was refused the privilege of playing day and date with the Academy. Isn't that right—isn't that the reason?

A. No, that wasn't the reason. As I stated on the prior run, which is 7-day availability, the picture was awarded to the Academy Theatre and if the Paradise Theatre was in dire need of a picture to play, whether the Paradise or what other theatre it might have been in the same area, if they had asked us if they could play on this same one, which was a 7-day, and if it run—and if the theatre who had bought the picture first they had agreed that it was okay we negotiated a deal for the other theatre.

Q. Well, now, you don't have any doubt, do you, that during the 1950 and 1951 period the Paradise was in dire need of 7 day pictures?

(Testimony of Lawrence W. Marriott.)

A. I don't know whether it was or not. If it was, he had the opportunity to bid for them. He didn't close his theatre. It still operated.

Q. Without regard to the question of bidding, just from the point of view of dire need, you know that the Paradise was in dire need of 7 day pictures during that period?

A. All I can say, Mr. Cornbloom, if he had bid the highest bid for the pictures, he would have been awarded the pictures.

Q. Can't you answer my question as to whether or not you knew that the Paradise was in dire need of 7 day pictures?

A. The only way I can answer that question is, I don't think he was in any more dire need than other theatres in the area, because it takes quite a few pictures to service that many theatres in the area.

Q. And he didn't get any from your company other than the one in the first month, did he?

A. He probably didn't see fit to bid the proper terms.

Q. Now, finally, actually in that area in 1950-1951, you did not make any studies of that area to decide the question of substantial competition, did you?

A. I did not make any study myself. I believe, as the [1133] record shows, there was correspondence with Mr. Landau, and Mr. Foster Blake is also my superior, and naturally policies he set up.

(Testimony of Lawrence W. Marriott.)

Q. Do I understand it was Universal's position in 1950-1951, that if the Academy Theatre would have granted permission, Universal was willing to permit the Paradise Theatre to play day and date with the Academy?

Mr. Mitchell: You mean on the pictures where the Academy won the bid?

Mr. Corinblit: Yes, on the pictures where they licensed the pictures on 7 day availability.

The Witness: You confused me in the theatre you mentioned first.

Q. (By Mr. Corinblit): Was it the position of Universal that if the Academy licensed a picture on a 7 day availability and was willing to permit Universal to license to the Paradise a day and date availability, that that was agreeable with Universal?

A. Yes, sir.

Q. In fact, in this case the Academy Theatre, owned by Fox West Coast, was unwilling to do that, is that correct?

A. I don't recall that they ever did play with them.

Q. You know that they said that they would not?

A. I think that is true.

Q. Now, when you said that if the Academy said all [1134] right, Universal would have been willing to play day and date—to permit day and date between the Academy and the Paradise, isn't it your opinion then that the two theatres were not in substantial competition with each other?

(Testimony of Lawrence W. Marriott.)

A. No, sir.

Q. Mr. Marriott, I want to call your attention to an incident occurring in April of 1951——

Mr. Corinblit: I will offer in evidence at this time a letter, Lehman to Marriott, Plaintiff's Exhibit 15-R.

The Court: It may be received in evidence.

The Clerk: 15-R.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 15-R.) [1135]

* * * * *

Mr. Mitchell: When you read that, Mr. Corinblit, you read it as stating he was anxious to negotiate the picture Up Front, which may give a wrong impression. What you are talking about is that he wants to play the picture entitled Up Front.

Mr. Corinblit: Yes, to play the picture entitled Up Front.

The Court: That is the name of the picture?

Mr. Corinblit: Yes, sir.

The Court: I was going to ask what that meant.

Q. (By Mr. Corinblit): Now, you knew when you got that letter, Mr. Marriott, if you hadn't known before that, that the Paradise was in dire need of 7 day pictures, didn't you?

A. According to the letter, he must have needed some.

Q. All right. Subsequently, on or about May 2, you had a conversation with Mr. Lehman, did you

(Testimony of Lawrence W. Marriott.)

not, in which you told him that the Academy Theatre had won the picture, that it was agreeable to you to permit the Paradise to play day and [1136] date if the Paradise could get permission from Fox West Coast.

Did you have that conversation? Did you make those statements to Mr. Lehman?

A. I think that's right.

Q. Did Mr. Lehman subsequently tell you that he had called Fox West Coast and asked them for permission and they had said no?

A. He no doubt did.

Q. In fact, during this period, Mr. Marriott, it was not Universal, but it was the defendant Fox West Coast who was deciding whether or not the Paradise could play on the 7 day availability, isn't that right?

The Court: That is when Fox had the picture, then Fox made the determination.

The Witness: That's right.

Mr. Mitchell: Fox determined whether to waive its right to prior availability is all there is to it. They bought a prior availability and they could waive the right if they wanted to.

Q. (By Mr. Corinblit): Take the court's question first, when Fox had the picture, Fox was the company that decided whether or not the Paradise would play that picture day and date?

A. Whether it had been Fox or any theatre that received it, it would be the same answer, yes. [1137]

(Testimony of Lawrence W. Marriott.)

Q. The answer is "Yes"? A. Yes.

Q. As a matter of fact, whether or not Fox got the picture, Fox was the company that decided whether or not Universal was going to permit the Paradise to play day and date, isn't that right?

A. On that one picture that they had been awarded, yes.

Q. Whether or not they were awarded the picture, you were doing what Fox wanted you to do, not what Universal wanted to do, isn't that right?

A. No, I can't say that, because there was pictures that the Academy had played on the same prior run availability with.

Q. You say there were pictures at the Academy that played day and date with the Paradise?

A. I didn't say the Paradise. I said the other theatres.

Q. The other theatres? A. Yes, sir.

Q. But I am talking about the Paradise, whether or not the Academy got the picture, it was Fox West Coast that was telling Universal whether or not the Paradise would be permitted to play day and date with the Academy.

Mr. Mitchell: Objected to as having been asked and answered. [1138]

The Court: Overruled. He hasn't answered. He answered a question, but he did not answer that question.

Mr. Mitchell: I think he answered it.

The Witness: Would you repeat it?

(Testimony of Lawrence W. Marriott.)

The Court: Read the question.

(Question read.)

The Witness: If that is the way you want to look at it, yes.

Mr. Corinblit: No further questions. [1139]

Cross Examination

Q. (By Mr. Mitchell): When you offered pictures after you started bidding again in 1950, how many 7-day runs did you offer on the bid?

A. One.

The Court: Are you talking about this particular area?

Mr. Mitchell: Yes, in this area, in this Inglewood-Westchester area.

Q. (By Mr. Mitchell): You offered one picture 7-day run on a bid? A. Right.

Q. And then what priority of availability did you give to the winning theatre?

A. He had no priority to the one that had the priority and the next availability was 14 days.

Q. I understand, but the one that won the bid over what theatres did he have the right to prevent others playing——

A. All of them in that area.

Q. You mean if the Paradise won the bid then if he wanted to he could prevent the La Tijera, the Fox Inglewood, the Fifth Avenue, the Academy, the Southside, from playing day and date?

A. That is true.

(Testimony of Lawrence W. Marriott.)

Q. Or he could upon request waive that right?

A. That is right. [1140]

Q. Now, was that a right that was special for Fox West Coast or did others have it?

A. Everyone had the same right.

Q. Marco Wolff running the Southside, he had it? A. He had the same right.

Q. Marco Wolff running the Paradise, did he have it? A. The same right.

Q. United Artists running the United Artists Theatre if it won the bid it had the same right?

A. Same right.

Q. And Fox West Coast running the Fifth Avenue, the Academy and the Fox Inglewood had the same right? A. Had the same right.

Q. All right. Now, suppose that Marco Wolff at the Southside won the bid, giving him the priority of run—— A. Yes, sir.

Q. Would you consult Fox West Coast as to whether you could sell another run in the area?

A. Certainly not.

Q. Would you consult Marco Wolff as to whether you could sell another run in the area?

A. If someone had asked if they could play the picture on the same date then we would have to receive the permission from Marco Wolff.

Q. If United Artists Theatre had won the bid it then [1141] got priority of run over all the other theatres in that area? A. That is right.

Q. If you wanted to sell a day and date run to

(Testimony of Lawrence W. Marriott.)

another theatre, say, the Paradise or the Southside, would you consult Fox West Coast?

A. I would consult United Artists who had won the bid.

Q. If the La Tijera, Mr. Kupper's theatre, won the bid would you give him a priority of run over the Paradise and the Southside and the Fox West Coast Theatres? A. Everyone.

Q. What if you wanted to try to sell another run in the area, say to the Southside?

A. Then we would have to consult Mr. Kupper.

Q. Would you consult Fox-West Coast?

A. No.

Q. You made a statement to Mr. Corinblit that might be interpreted as meaning whenever you wanted to play a second run in the area you go ask Fox-West Coast.

A. Only if Fox-West Coast had won the picture.

Q. Now, you say that when this gentleman that went through your files out there destroying records—you say he left some of them?

A. That is true.

Q. Among some of the records that he left for you did he [1142] leave the contract record with respect to the Inglewood-Westchester area?

A. My understanding is that most all the contracts were left intact.

Q. All right. Now, I have handed you a file there of contracts, starting back in September, 1949.

A. Yes, sir.

Q. At this time you have testified that Universal

(Testimony of Lawrence W. Marriott.)

was not offering their pictures for bid but was negotiating with all of the theatres in the area to see which one would give you the most money for your pictures? A. That is right.

Q. Is there anything—let us take the first contract, Johnnie Stool Pigeon and Abbott and Costello Meet The Killer. They were apparently sold together. A. Yes, sir.

Q. Is there anything there that indicates to what theatres that picture was sold?

A. Yes. The picture was sold to the La Tijera and Imperial Theatres on 7-day availability.

Q. Is there anything that indicates whether or not it was sold on a bid?

A. I am satisfied that——

The Court: That is not the question. The question is, is there anything there to indicate that.

The Witness: All right, yes.

Q. (By Mr. Mitchell): What indication is there?

A. The indication is when a picture, whether this picture or any other picture, is awarded on a bid the terms prevail—no adjustment can be made.

In looking at this I see that there is a form which we call A.E. 97 whereby the terms were changed from the original terms in this deal.

Mr. Corinblit: I will object to that and move to strike the answer as being non-responsive to the question.

The witness testified clearly now that there was no bidding at this time and this is simply conclu-

(Testimony of Lawrence W. Marriott.)

sions in his own mind. I think it is non-responsive to the question.

The Court: He says there is some indication and he has the right to point out the indication.

Mr. Mitchell: He agrees there was no bidding at this time.

The Witness: No bidding.

Q. (By Mr. Mitchell): And these pictures were awarded by negotiation? A. That is true.

Q. Then the next picture in September, 1949?

A. Yes.

Q. The name of the picture is, Yes, That's My Baby. A. Yes, sir. [1144]

Q. To what theatres were those pictures awarded?

A. Yes, Sir, That's My Baby was also sold to the Imperial and La Tijera.

Q. All right. The next picture is Blue Lagoon. To what theatres was that licensed?

A. Blue Lagoon was sold to the La Tijera.

Q. And the Imperial also?

A. I don't believe so—wait a minute. I couldn't say, Mr. Mitchell, because there is no La Tijera contract here.

Q. You mean there is no La Tijera contract?

A. No La Tijera contract. There is an Imperial contract which on the recommendation for the Imperial contract referred to the La Tijera contract—recommend of the same date.

Q. That indicated that the La Tijera was also sold?

(Testimony of Lawrence W. Marriott.)

A. That would indicate that the picture was sold to the La Tijera and Imperial.

Q. All right. Now, the next picture is Arctic Manhunt. The contract is dated October 19, 1949. To what theatre was that picture licensed?

A. The picture was licensed to the Academy Theatre on the 7-day availability.

Q. All right. Let us take the next one, Sword in the Desert. [1145] A. Yes, sir.

Q. Contract dated October 24, 1941. To what theatre was that contract licensed—theatre licensed?

A. That was sold to the Southside and the Academy.

Q. All right. The next picture is The Gal Who Took the West. The contract is dated October 27, 1949. To what theatre was that picture sold?

A. Again there is only one contract for the Imperial Theatre. Nothing for the La Tijera but the recommendation states refer to the La Tijera which would lead me to believe that the picture played both theatres, the La Tijera and Imperial. [1146]

Q. All right. Then the next picture, by contract dated November 10, 1949, is Abandoned Woman. To what theatre was that picture licensed?

A. That picture was sold to the Fox Theatre.

Q. The next picture is Christopher Columbus, by contract dated November 19, 1949. To what theatre was that picture licensed?

A. United Artists Theatre in Inglewood.

Q. And the next picture is the Story of Molly X,

(Testimony of Lawrence W. Marriott.)

by contract dated December 1, 1949. To what theatre was that licensed?

A. That was licensed to United Artists Theatre.

Q. The next picture is entitled Bagdad, by contract dated January 6, 1950. To what theatre was that picture licensed, or theatres?

A. Imperial and La Tijera.

Q. The next picture is entitled Undertow, by contract dated January 19, 1950. To what theatre was that picture licensed?

A. To the Academy Theatre.

Q. The next picture is entitled South Sea Sinner, by contract dated January 30, 1950. To what theatres was that picture licensed?

A. South Sea Sinner, La Tijera and Imperial Theatres on the 7 day availability. [1147]

Q. The next picture is entitled Free For All, by contract dated January 8, 1950. To what theatres was that picture licensed?

A. To the Imperial Theatre.

Q. How about the La Tijera?

A. I don't believe so. Nothing to indicate that it was.

Q. The next picture is Woman in Hiding, by contract dated February 8, 1950. To what theatre or theatres was that licensed?

A. Imperial and La Tijera.

Q. Both those theatres were operated by Bill Kupper?

A. That is correct.

Q. The next picture is The Rugged O'Riordans,

(Testimony of Lawrence W. Marriott.)

by contract dated February 10, 1950. To what theatre or theatres was that licensed?

A. The Academy Theatre, Inglewood.

Q. The next picture is *Borderline*, by contract dated February 21, 1950. To what theatre was that sold?

A. *Borderline* was sold to the United Artists and the La Tijera.

Q. The next picture is entitled *Francis*, by contract dated March 13, 1950. To what theatres was that sold?

A. It was sold to the Academy Theatre and the Southside.

Q. The next picture is *Outside the Wall*, by contract [1148] dated March 24, 1950. To what theatres was that picture sold?

A. The picture was sold to the Imperial and La Tijera.

Q. Now, the next picture is *One Way Street*, by contract dated May 1, 1950. To what theatres was that picture licensed?

A. I don't have that.

Q. Here they are. I will take the others away so you won't get them mixed up.

A. *One Way Street* was sold to the La Tijera and Imperial.

Q. Still by negotiations?

A. That's right.

Q. The next picture, *I Was a Shoplifter*, by contract dated May 12, 1950. To what theatre was that picture licensed?

A. That was sold to the Academy Theatre.

Q. The next picture is entitled *Tight Little*

(Testimony of Lawrence W. Marriott.)

Island, by contract dated May 29, 1950. To what theatre? A. Sold to the La Tijera.

Q. All right. Now, the next picture is Comanche Territory, by contract dated May 29, 1950. I would like you to look at that and tell me whether or not there is some indication on that as to how you licensed that picture?

A. In my recommendation on the contract, which is information that was taken off the bid data——

Q. Just what does it say? Read it.

A. It says "Bid first run Inglewood, Comanche Territory, awarded to the La Tijera Theatre by Mr. Blake, phone May 18, 1950. Refer to bid data on same date."

Q. Does that indicate how you licensed that picture?

A. Yes, sir. It was awarded on bidding.

Q. That is the first picture of those we have gone over on which you had bidding?

A. That's right.

Q. This was long before there was any Paradise? A. That's right.

Q. The next picture is Sierra, by contract dated June 6, 1950. Will you tell me what your records show with respect to that picture?

A. My records show that——

Q. Just read it.

A. "All bids Sierra first run Inglewood rejected. Negotiated deal with the Fifth Avenue for 7 days scale with a minimum of 30 per cent. Deal dis-

(Testimony of Lawrence W. Marriott.)

cussed with Mr. Rose before approving. Refer to bid data June 5, 1950."

Q. The next picture is *Spy Hunt*, by contract dated June 8, 1950. What does your record show? Just read it.

A. "Bid first run *Inglewood Spy Hunt*, awarded to Academy Theatre by Mr. Rose, phone June 8. Refer to bid data June 7, 1950." [1150]

Q. You are still bidding? A. Yes, sir.

Q. The next picture is *Peggy*, by contract dated June 21, 1950. Tell me what your record shows on that picture.

A. "First run bids *Inglewood Peggy* awarded to Imperial Theatre by Mr. Blake, June 20, 1950. Refer to bid data on same date."

Q. Does it show any other theatre also playing that picture on the 7 day availability?

A. Yes, sir. It also was sold on the same availability to the La Tijera, and the recommendation reads: "Bid first run *Inglewood on Peggy*, was awarded to the Imperial Theatre. Mr. Kupper will play the picture day and date in the La Tijera. Negotiated a deal with him securing 35 per cent."

Q. This is one of those instances where you got somebody else's permission?

A. Where I got the permission of Mr. Kupper.

Q. The very same man who had the other run?

A. Yes.

Q. The next picture, *Curtain Call at Cactus Creek*, by contract July 5, 1950. What do your records show?

(Testimony of Lawrence W. Marriott.)

A. The record states "Bid first run Inglewood, Curtain Call at Cactus Creek, awarded to La Tijera Theatre by Mr. Rose, July 5, 1950. Refer to the bid data July 3, 1950."

Q. Does it also show that the Imperial played day and [1151] date?

A. Yes, sir, and the recommendation is, "Imperial first run bid Inglewood, Curtain Call at Cactus Creek was awarded to La Tijera Theatre, and negotiated deal with the Imperial to play day and date."

Q. All right. The next picture is Winchester .73, by contract dated July 27, 1950.

A. It says "Bids awarded to the Academy Theatre Inglewood by Mr. Rose, July 20, 1950. Refer to bid data the same date."

Q. Does it show any other theatre playing the picture day and date?

A. Yes, sir. It played the Southside Theatre and the recommendation states "Sold Winchester .73 at 35 per cent, same terms as Francis."

Q. Is this one of those instances where you were able to get the agreement of Fox West Coast to permit another theatre to play day and date?

A. That is true.

Q. That is, they waived their priority of run?

A. That is true.

Q. The next picture is Adam and Evalyn, by contract dated August 8, 1950. What does your record show?

A. The record shows that this picture was sold to the Academy, "Sold Adam and Evalyn to the

(Testimony of Lawrence W. Marriott.)

Academy Theatre 7 days, [1152] \$400, and will be used as a second feature. We previously sold *One Woman's Story* 7 days, \$300.

Q. The next picture is *Foreign Legion*, by contract dated August 11, 1950. What do your records show?

A. The records state "Bid for the 7 day availability Inglewood, Abbott and Costello in *Foreign Legion*, was awarded to the Academy Theatre by Mr. Rose August 3, 1950. However, after picture had been awarded, Mr. Kupper of the La Tijera Theatre talked with Fox West Coast and informed them that he had no picture to book on this availability, and they in turn agreed to give him this picture at the same terms the picture was awarded to them."

Q. So what theatre played the picture?

A. The picture played the La Tijera.

Q. The next picture *Astonished Heart*, by contract dated August 24, 1950.

By this time the *Paradise* is coming into being. What do your records show?

A. My record shows on the recommendation, "Booked *Astonished Heart* to play first run Inglewood at established percentage sliding scale."

Q. At what theatre?

A. At the Fifth Avenue.

Q. Does it show anything about bids or no bids?

A. It doesn't show that, and it happens to be that [1153] *The Astonished Heart* was one of our J. Arthur Rank English pictures, which most thea-

(Testimony of Lawrence W. Marriott.)

tres tried to evade and not play. Mr. Rank doesn't like that, either. So in a case like that, I presume I would say 99 per cent I am right that there was no bid, so we negotiated a deal for the best we could and we accepted the Fifth Avenue.

Q. The next picture is Desert Hawk, a contract dated August 25, 1950. What does your record show about Desert Hawk?

A. Recommendation states, "Bid first run Inglewood Desert Hawk awarded to the Paradise Theatre by Mr. Blake over the phone, August 24, 1950. We accept a percentage in lieu of the flat rental. Refer to bid data August 24, 1950."

Q. Was that picture licensed to any other theatre?

A. It was also licensed to the Imperial Theatre.

Q. What does your record show?

A. The record shows "Desert Hawk was awarded to the Paradise Theatre first run Inglewood, and on the Paradise bid they only requested clearance over the Loyola and La Tijera Theatres, and these were the only two theatres they requested clearance over. I negotiated a deal with the Imperial Theatre securing \$1,250 for 7 days."

Q. This was at a time when Marco Wolff did some bidding for the Paradise, right?

A. I am satisfied—yes, that is true. [1154]

Q. This is in August 1950?

A. He signed the contract.

Q. Marco did?

A. Marco signed the contract.

(Testimony of Lawrence W. Marriott.)

Q. The next picture is Louisa, by contract dated September 7, 1950. What do your records show?

A. "Louisa, bid for first run Inglewood on Louisa awarded to the Imperial Theatre by Mr. Blake over the phone September 7, 1950. Refer to bid data from same date."

The picture also played the La Tijera and the bid data states, the recommendation states, "First run bids to Louisa for Inglewood was awarded to the Imperial Theatre. Negotiated a deal with the La Tijera Theatre to play day and date with the Imperial." [1155]

Q. All right. The next picture is Saddle Tramp by contract dated September 21, 1950. What do your records show?

A. Saddle Tramp. The recommendation states: "Bid first run Inglewood. Saddle Tramp awarded the Academy Theatre by Mr. Rose over the phone September 21, 1950. Refer to bid data dated September 20, 1950."

Mr. Corinblit: May I have the dates again, please?

The Witness: Awarded by Mr. Rose over the phone September 21, 1950. Refer to bid data September 20th.

Q. (By Mr. Mitchell): All right. The next picture is Shakedown by contract dated October 2, 1950.

A. Shakedown. The recommendation states: "First run bid Inglewood. Shakedown awarded to the La Tijera Theatre, Los Angeles, by Mr. Rose

(Testimony of Lawrence W. Marriott.)

September 29, 1950. Refer to bid data dated September 28, 1950."

Q. All right. Does the La Tijera Theatre—did the La Tijera Theatre let another theatre play day and date?

A. It played it day and date with the Imperial. The recommendation states: "We awarded bid—" I am sorry, this is another recommendation. I will check it.

There must be a typographical error. The recommendation states:

"We awarded bid for the 14-day availability Inglewood [1156] on Shakedown to La Tijera Theatre. Negotiated deal with the Imperial to play day and date securing 40 per cent."

So I am satisfied that it is a typographical error. The 14 should be a 7.

Q. When you say "14-day availability," you licensed on bid one 7-day availability?

A. That is right.

Q. And where you could you negotiated a second 7-day availability?

A. That is correct.

Q. Did you also license a 14-day availability?

A. That is true.

Q. How many?

A. Oh, 14—my recollection it was one—it would be two. I think it is one.

Q. So if the 7-day availability played for 7 days the 14 would just continue on without clearance?

A. Immediately following.

Q. In these contracts with respect to the 7-day

(Testimony of Lawrence W. Marriott.)

availability, was there any provision for clearance?

A. Just priority.

Q. A prior run? A. That is right.

Q. No lapse of time? [1157]

A. No lapse of time between the 7 and the next run.

Q. All right. The next picture is Rocking Horse Winner. The contract is dated October 3, 1950. To what theatre was that awarded? What do your records show?

A. I have to smile when I read this one.

Well, originally Fox intended to play Rocking Horse Winner for a week. The picture opened so poorly that it was discontinued after the first day. We agreed to accept \$100 for the one day booking, which was the same rental as accepted for Astonished Heart which played five days first run in Inglewood in the Fifth Avenue Theatre.

Q. All right. The next picture is Sleeping City by contract dated October 15, 1950. What do your records show?

A. The recommendation states: "Bid first run Inglewood. Sleeping City awarded to the Imperial Theatre by Mr. Rose over the phone October 5, 1950. Refer to bid data October 4."

Mr. Corinblit: What theatre was that awarded to?

The Witness: Imperial. It also played the La Tijera which recommendation reads: "Bids for Sleeping City 7-day availability awarded to the Imperial Theatre Inglewood. Sold day and date run in

(Testimony of Lawrence W. Marriott.)

the La Tijera Theatre 7 days. \$600'' which is the same rental as the Imperial Theatre.

Q. (By Mr. Mitchell): All right. The next picture is [1158] Wyoming Mail by contract dated October 27, 1950. What do your records show?

A. The recommendation states:

"Bid first run Inglewood 7-day availability. Wyoming Mail awarded to the Fox Theatre by Mr. Rose over the phone October 25, 1950. Refer to bid data October 24, 1950."

Q. That is the Fox Theatre in downtown Inglewood? A. That is right.

Q. That is the one that Fox West Coast redecorated or reconstructed?

A. The Fox Theatre in——

Q. Inglewood.

A. Inglewood. That was formerly known as the old Granada Theatre, which was destroyed by fire and the Fox Theatre was a new theatre built from the ground up.

Q. All right. The next picture is Woman on the Run by contract dated November 2, 1950.

A. Woman on the Run. The recommendation states: "I awarded bid of Woman on the Run for the 7-day availability Inglewood to the Academy Theatre November 2, 1950. Refer to bid data of same day."

And the picture also played in the Southside. The contract recommendation states:

"Bid first run Inglewood for Woman on the Run awarded [1159] to the Academy Theatre. Fox West

(Testimony of Lawrence W. Marriott.)

Coast did not request clearance over the Southside Theatre and Mr. Marriott was able to negotiate a deal with the Southside Theatre to play for a day and date run 7 days, \$400." It happens to be this recommendation was signed by Foster Blake. I no doubt was on a vacation or away from the office.

The Court: The word "vacation" suggests that we should take a recess at this time.

Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone; you are not to permit anyone to discuss it to you and you are not to formulate or express any opinion as to the rights of the parties in this case until it is finally submitted to you.

With that admonition we will now recess for 15 minutes.

(Short recess.) [1160]

The Court: Is it stipulated the jury is present in the box?

Mr. Johnston: Yes, your Honor.

Mr. Corinblit: So stipulated.

Mr. Mitchell: I think maybe we can shorten this somewhat, your Honor. It gets pretty tedious going through these contract by contract. So I will show Mr. Marriott a compilation taken from the contract files and the cut-off cards of Universal, and ask Mr. Marriott if you have yourself checked that as to correctness.

The Witness: I have.

Q. (By Mr. Mitchell): Does that correctly show

(Testimony of Lawrence W. Marriott.)

the various pictures were awarded or negotiated as shown by the records of Universal? A. Yes.

Mr. Corinblit: Just a minute. Counsel, is this information all taken from the records that are here?

Mr. Mitchell: Yes, the cut-off cards and the contracts.

Mr. Corinblit: The cut-off cards and the contracts?

Mr. Mitchell: Yes.

Mr. Corinblit: The fact as to whether a picture was awarded by bidding or negotiated would come, then, from the records or from the cut-off cards, too? [1161]

Mr. Mitchell: That would come from the contract records.

Mr. Corinblit: The contract records?

Mr. Mitchell: Yes.

The Witness: The contract records.

Mr. Mitchell: I don't believe that shows on the cut-off cards, does it?

The Witness: No.

Mr. Mitchell: Mr. Corinblit, answering your question, there are a few instances where a day and date run did not show in the contract material, but where it showed up on the cut-off cards as having played along with a bid picture, so we put in the word negotiated, because obviously it was not bid. It was negotiated day and date.

Mr. Corinblit: Yes.

Mr. Mitchell: I will offer the document which the witness has just identified.

(Testimony of Lawrence W. Marriott.)

Mr. Corinblit: No objection, your Honor.

The Court: It may be received in evidence.

The Clerk: Is that Universal's exhibit, Mr. Mitchell?

Mr. Mitchell: Yes, it is. I'm sorry.

Mr. Corinblit: What number will that be?

The Clerk: Is this a new number?

Mr. Mitchell: It is a new number. [1162]

The Clerk: Universal G-1.

(The exhibit referred to was received in evidence and marked as Universal's Exhibit G-1.)

Mr. Mitchell: I think, if I may, your Honor, I can read what is on here faster than doing it by question and answer, if that is satisfactory to you, to read the exhibit to the jury.

We had proceeded as far as November 2, 1950, with the picture *Woman on the Run*, and I will read these pictures rapidly just for the purpose of indicating to you how they were licensed and to what theatres. [1163]

Q. (By Mr. Mitchell): Deported. November 15, 1950. Academy on bid. Southside negotiated.

Kansas Raider. November 26, 1950. La Tijera on bid. Imperial negotiated.

The Milkman. November 30, 1956—I mean 1950. That is a clerical error in the exhibit. Both pictures negotiated, one to the La Tijera—I mean the picture negotiated to two theatres, one to the La Tijera and one to the Imperial.

Maybe you had better look at that contract. Is there any explanation why those pictures were nego-

(Testimony of Lawrence W. Marriott.)

tiated rather than bid? A. What is the title?

Q. The Milkman, November 30th. I think I have it here.

(Handing document to the witness.)

A. The Milkman: The contract recommendation states: "Refer to the Imperial Theatre Inglewood contract recommendation of same date."

Q. That seems to be missing?

A. It seems to be missing.

Q. All right. The next picture Undercover Girl by contract dated December 18, 1950. La Tijera awarded by bidding.

Mystery Sub by contract dated December 22, 1950. United Artists. All bids rejected and negotiated also to [1164] Imperial negotiated.

The next picture is Frenchie by contract December 28, 1950. All bids rejected. Negotiated to La Tijera and the Imperial.

The next picture is Harvey by contract dated February 1, 1951. Academy awarded by bidding. Southside negotiated.

The next picture Under the Gun by contract dated February 20, 1951. No bids received. Negotiated to La Tijera, Imperial and United Artists Theatre.

Operation Disaster by contract dated February 23, 1951. No bids received. Negotiated to the Fifth Avenue.

Tomahawk by contract dated March 2, 1951. Academy awarded by bidding.

Bedtime For Bonzo by contract dated March 27,

(Testimony of Lawrence W. Marriott.)

1951. No bids received. Awarded to the Academy by negotiation.

Target Unknown by contract dated April 2, 1951. Academy awarded by bidding. Southside negotiated.

Meet the Invisible Man by contract dated April 6, 1951. United Artists awarded by bidding.

The Groom Wore Spurs by contract dated April 20, 1951. Academy awarded by bidding. Southside negotiated.

Up Front by contract dated April 27, 1951. Academy awarded by bidding.

Ma & Pa Kettle Back on the Farm by contract dated May 11, 1951. No bids received. Negotiated to the La Tijera. [1165]

Now, I would like you, Mr. Marriott, to examine the contract data on that picture and read to the jury what your record shows with respect thereto.

A. Ma & Pa Kettle—we did not receive any bids first run Inglewood 7-day availability. Ma & Pa Kettle Back on the Farm negotiated a deal with all theatres in this area. [1166]

Q. (By Mr. Mitchell): When you say that, you mean tried to negotiate a deal?

A. Tried to negotiate a deal. In other words, I contacted all and all were booked on this availability.

Q. All were booked on this availability?

A. With the exception of the Paradise and La Tijera Theatre. Our best offer from the Paradise Theatre was \$500 against 35 per cent, less second

(Testimony of Lawrence W. Marriott.)

feature. Our offer in the La Tijera Theatre was \$630 against 35 per cent, less second feature. We accepted the latter. "Refer to bid data dated May 4, 1951."

Q. That was an occasion when you negotiated with the La Tijera and the Paradise?

A. That is true.

Mr. Mitchell: The next picture shown on Exhibit Universal G-1 is "Double Crossbones, by contract dated May 15, 1951, Fifth Avenue (awarded by bidding.) La Tijera (negotiated)."

The next one is Air Cadet, "by contract dated May 18, 1951, Academy (awarded by bidding)."

The next one is Smuggler's Island, "contract dated May 25, 1951, all bids rejected. Negotiated with United Artists and La Tijera. Pictures awarded by negotiation."

Fat Man, "by contract dated June 4, 1951, La Tijera awarded by bid. Southside negotiated."

Katie Did It, La Tijera, awarded by bid. Southside negotiated.

Apache Drums, June 22, 1951, Academy, awarded by bid. Southside negotiated.

Hollywood Story, June 22, 1951, Academy, awarded by bid.

Prince Who Was a Thief, July 3, 1951, La Tijera awarded by bidding, Fifth Avenue awarded by bidding.

Q. (By Mr. Mitchell): I will ask you to look at your contract record on that picture, Mr. Marriott, and read to the jury what the record shows.

(Testimony of Lawrence W. Marriott.)

A. Prince Was a Thief. Refer to bid data dated July 3, 1951, at which time we awarded Prince Was a Thief to the La Tijera and Fifth Avenue Theatres to play day and date, since neither theatre requested clearance. Refer to bid data dated July 3, 1951.

Q. This was, then, an occasion when you didn't have to get a waiver of prior availability or clearance, as you call it there? A. That's right.

Q. Again, was there really any clearance in the sense of an interval of time elapsing?

A. No. It was day and date. Both had the same run on the same playing date.

Q. Well, I mean—all right. [1168]

Mr. Mitchell: Reading further from Universal Exhibit G-1, the next picture is Coming Round the Mountain, July 24, 1951, all bids rejected. Academy negotiated.

The next one is Renegade, August 1, 1951. No bids received. La Tijera negotiated.

The next one, Cattle Drive, dated July 6, 1951, La Tijera awarded by bid.

The next one is Magnet, dated August 14, 1951, no bids received. Awarded to Fifth Avenue by negotiation.

Iron Man, August 23, 1951. All bids rejected. Picture to United Artists by negotiation; also to La Tijera by negotiation.

Francis Goes to the Races, August 28, 1951. La Tijera, awarded by bid. Century Drive-In, awarded by bid.

(Testimony of Lawrence W. Marriott.)

Little Egypt, September 17, 1951. La Tijera, awarded by bid. Southside, awarded by bid.

That concludes all of the pictures on the exhibit.

Q. When you awarded a picture to a theatre which had bid the highest, and the matter of a second 7 day run was under consideration, did you go out and solicit a second 7 day run, or did you wait for somebody to come to you?

A. We waited until someone come to us, because when you notify the one who had been awarded the picture to the ones who didn't get it, it was known who had the picture, and anyone desiring the picture would contact us. [1169]

The Court: May I ask a question?

Mr. Mitchell: Yes, sir.

The Court: When you had bids from different people and you accepted one of those bids, did you send a notice to the others?

The Witness: Yes, sir.

The Court: As to who had the bid?

The Witness: As to who the picture was awarded to.

The Court: Invariably you notified the other parties?

The Witness: Yes, sir, at the same time we notified the one who had been awarded the picture.

The Court: You only send those notices to those who have bid. You don't sent it to anyone who didn't bid?

The Witness: No.

The Court: Just the ones that had sent in bids?

(Testimony of Lawrence W. Marriott.)

The Witness: The ones we received a bid from.

Q. (By Mr. Mitchell): So everyone who has bid a picture knows the result?

A. That's right.

Q. If they need a picture of Universal's and want to try and get a day and date run, what do they do?

A. Contact me.

Q. They contact you? A. Yes, sir. [1170]

Q. Who is it contacts the winning bidder to see if he will waive priority of availability?

A. I do.

Q. You see if you can get him to waive that and let you sell another run in the area?

A. That is true.

Q. Do you ever sell more than two 7 day runs in this area?

A. I think we have.

Q. I guess maybe this exhibit shows one occasion.

A. I don't know, but I think we have.

Q. I have here a document which the plaintiff has marked for identification, a form of bid letter, dated October 16, 1950, from you to Marco Wolff with respect to the Paradise Theatre. Is that the form of bid letter which you sent out during this period of time?

A. That is true.

Q. That bid letter appears to be with respect to a certain picture by the name of——

A. Wyoming Mail.

Q. Is this the kind of a bid letter that was sent out on all pictures after you started bidding in May 1950?

A. That is true.

(Testimony of Lawrence W. Marriott.)

Mr. Mitchell: All right. I will offer the document in evidence. How do you want to mark that, Mr. Corinblit? Do [1171] you want to keep that as a plaintiff's Exhibit or mark it as one of Universal's exhibits?

Mr. Corinblit: I think you can mark it as one of yours and substitute a copy and let me have my original.

Mr. Mitchell: All right.

The Court: It may be received in evidence.

The Clerk: Universal's Exhibit G-2.

(The exhibit referred to was received in evidence and marked as Universal's Exhibit G-2.) [1172]

* * * * *

Q. (By Mr. Mitchell): When you say "first run exhibition in Inglewood, California," you mean a 7-day run? A. 7-day availability.

Q. And that is the first time you made pictures available in Inglewood? A. That is right.

Q. Well, if a bid, as it was on numerous occasions here, were awarded to the Academy Theatre and if the Paradise people would come to you and ask you if you would award a day and date run to the Paradise Theatre during this period of time, what would you do?

A. I would contact Fox West Coast to whom the picture had been awarded to.

Q. And say what?

A. And tell them the Paradise had requested that they can use this picture on the same play date

(Testimony of Lawrence W. Marriott.)

and ask them if I could contact the Paradise and sell it to them.

Q. And the same thing with respect to the Southside [1174] Theatre?

A. The same thing.

Q. And the same thing with respect to the United Artists Theatre? A. Same thing.

Q. And the same thing with respect to the La Tijera or would you sell La Tijera and Paradise day and date?

A. Oh, no, no. I would contact whoever the picture had been awarded to.

Mr. Mitchell: That is all.

Redirect Examination

Mr. Corinblit: Do you have any examination, Mr. Johnston?

Mr. Johnston: I have no questions.

Q. (By Mr. Corinblit): Mr. Marriott, would you place in front of you or perhaps you have it there, a copy of Defendant's Exhibit G-1. Do you have a copy there?

(Document handed to witness.)

Q. Now, on the first page of Defendant's Exhibit G-1, which covers pictures licensed from May 1, 1950 to August 24, 1950, that first page reveals that there was one picture that was there—there was a picture won by the Academy in which you—in which the Southside negotiated it for the second 7-day run. That is the picture Winchester .73.

A. That is right. [1175]

(Testimony of Lawrence W. Marriott.)

Q. Now, let us get it clear as to what happened. What happened was that you had bidding. The Academy won the bid. You went to the Fox West Coast and asked them, "Will you let me sell to the Southside," and Fox said, "Okay," and you sold to the Southside. It that how it went? A. No.

Q. Pardon me?

A. No, sir. The Southside contacted me.

Q. The Southside contacted you?

A. Yes, sir.

Q. And asked you to play—asked you to play day and date and then you contacted Fox and asked Fox if that was all right and Fox said it was all right and then you played it day and date at the Southside? A. I made my deal.

Q. Now, on the second page with respect to the picture *Woman on the Run*, November 2, 1950, the same thing happened. The Academy won the bid. Southside you say contacted you and you went and talked to Fox West Coast. You asked them if it was all right with them if you negotiated with the Southside and they said, "Okay," and you went ahead and negotiated with the Southside?

A. That is right. [1176]

Q. And you did that with respect to the picture *Deported*? A. That is right.

Q. As well as with respect to any of the other pictures in which the Academy won the bid and then you negotiated with the Southside. That was the regular way you worked it, is that right?

(Testimony of Lawrence W. Marriott.)

A. That is right.

Q. Now, there is no question about the fact that after—well, both—well, during the early fall of 1950 as well as certainly after April 1951, the Paradise was knocking on your door saying, “Will you negotiate for 7-day run for us”? They were asking for that?

A. That is right.

Q. All right. And——

Mr. Mitchell: Asking for it without bidding.

Mr. Corinblit: Just a minute, just a minute. I think I am entitled to an opportunity to examine the witness.

Q. (By Mr. Corinblit): Now, then, when, and as indicated by the example in Up Front, when they asked you to negotiate for 7 days you went to Fox, or in this case Paradise themselves went to Fox and Fox said, “No soap.” They would not permit the Paradise to play day and date, is that right?

A. Right.

Q. And that happened so far as you are concerned when [1177] you asked Fox if it was all right to let the Paradise play day and date with the Academy and they refused, isn’t that right?

A. I imagine that it is.

Q. Now, it is also true—incidentally, I think we pointed this out before but we ought to do it again—the Academy is located approximately 31½ miles from the Southside and the Academy is located approximately 41½ miles from the Paradise.

Now, Universal never set up this kind of system

(Testimony of Lawrence W. Marriott.)

—you never said to the film companies in the areas
—you never said to exhibitors, “We are going to
sell one run in the Academy and one run in the
Paradise”?

Mr. Mitchell: I don’t know what the question
is. He has so many people mixed up in it. It is
compound and extreme.

The Court: I think we had better delete the ques-
tion.

Mr. Corinblit: All right, sir.

Q. (By Mr. Corinblit): You never—Universal
acting on its own behalf with its pictures never set
up a system whereby it decided in the area that it
would permit the Paradise to play day and date
with the Academy?

A. No, we had no such system.

Q. You always insisted on getting permission
from the Academy in order to license day and date
to the Paradise? [1178]

A. If they had been awarded the picture.

Q. Now, you notice, Mr. Marriott, that the Acad-
emy was willing to release clearance as far as the
Southside was concerned, 3½ miles away, but the
Academy was not willing to release clearance as far
as the Paradise was concerned, 4½ miles away.

Did you ever ask Fox why they were willing to
release clearance over a theatre within 3½ miles but
not willing to release clearance over a theatre 4½
miles? A. I don’t think I did.

Q. You never did? A. I don’t think so.

(Testimony of Lawrence W. Marriott.)

Q. So if the purpose of Fox in refusing to release clearance over the Paradise was to protect the Loyola Theatre, why, you never interfered with that, did you?

Mr. Mitchell: Now, that is certainly argumentative, your Honor, and I object to it on that ground.

The Court: Sustained.

You never discussed with Fox the reason why they would not release the priority as far as the Paradise was concerned, did you?

The Witness: No, sir.

Q. (By Mr. Corinblit): Now, as a matter of fact, in addition to the—I will withdraw that.

There is one occasion—I notice the picture [1179] Prince Who Was A Thief. I think there are some documents that were handed to you with respect to the picture Prince Who Was A Thief. May I examine them for a moment?

All right. Now, the picture Prince Who Was A Thief was played at two theatres? A. Yes.

Q. Or was it not? A. That is right.

Q. The first theatre was the—well, first or second, doesn't matter, one of the theatres was the Fifth Avenue Theatre, is that right?

A. That is right.

Q. And the second theatre was the Tijera Theatre? A. Right.

Q. Now, those theatres, the Fifth Avenue located here, and the La Tijera Theatre is here. Would you read from your reason stated in your docu-

(Testimony of Lawrence W. Marriott.)

ments, your correspondence, as to how it was that those two theatres played day and date?

A. On the contract recommendation for the La Tijera Theatre I state: "Refer to bid data dated July 3rd, 1951," at which time we awarded Prince Who Was A Thief to the La Tijera and Fifth Avenue Theatres to play day and date since neither theatre requested clearance.

"Refer to bid data dated July 3, 1951."

Now on the Fifth Avenue recommendation I state: Mr. Rose [1180] awarded bid on 7-day availability Inglewood on Prince Who Was A Thief to the Fifth Avenue Theatre and since the Fifth Avenue Theatre did not request any clearance we also accepted bid from the La Tijera Theatre on the same availability. They will play day and date. Refer to bid data July 3, 1951. [1181]

Q. Now there again the Fifth Avenue told Universal that "It's all right with us to play day and date with the La Tijera," isn't that right? That is the effect of that statement?

A. I don't know whether that is the effect of the statement or not. In other words, there was a bid and they didn't ask for clearance.

Q. They didn't ask for clearance over the La Tijera? A. That's right.

Q. But they always insisted on maintaining clearance over the Paradise, isn't that right?

A. They usually did. I don't know whether they did or not.

(Testimony of Lawrence W. Marriott.)

The Court: May I ask a question? When a bid comes in, do they in the bid say, "We want clearance over theatres A, B, C, and D"?

The Witness: Generally they do.

The Court: If they don't say anything about wanting clearance——

The Witness: Then we can do as we please.

The Court: If they don't mention the theatres they want clearance over, then you consider it is a waiver of clearance?

The Witness: Yes.

The Court: And you can go ahead and make another [1182] deal with some other theatre?

The Witness: That's right.

The Court: So if they want clearance, they enumerate the theatres in the bid?

The Witness: That's right.

The Court: In this case they didn't enumerate. Neither one of them enumerated the other?

The Witness: That's right.

The Court: And you considered that as open?

The Witness: That's right.

The Court: And then you went ahead and negotiated another contract?

The Witness: That's right.

Q. (By Mr. Corinblit): Mr. Marriott, you say it is enumerated in the bid. In other words, Fox put it in the bid, that they wanted clearance over the Paradise, for example, for the Academy and Fifth Avenue? A. Usually, I think so.

(Testimony of Lawrence W. Marriott.)

Q. Would you give me an example from those records in front of you?

A. No, I can't give you one because I don't have the original bids. All I have is "Refer to the bid data." and that is where bids would be posted. I don't have that information.

Q. Where is that information? [1183]

A. As I have told you, this information was destroyed by an auditor from the home office last year, not only that information, but other information.

Q. Now, isn't it a fact, Mr. Marriott, that in those bid letters Fox took the position that under no circumstances would they permit the Paradise to play day and date with their theatres?

A. It must be the case because I don't think they played, as the records reveal. [1184]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Marriott, I have examined Fox's Exhibit E in evidence in this case. In there during the period February 16, to March 31, I find two bids on the 7 day run from the Academy Theatre, one March 27th on the picture Target Unknown, and one February 26 on the picture Tomahawk. I went through them in a hurry so it may be that I have missed one.

Mr. Johnston: What was the second one, Mr. Corinblit? [1187]

Mr. Corinblit: Tomahawk.

Q. On neither of those bids is the clearance de-

(Testimony of Lawrence W. Marriott.)

signated that the theatre wanted. Didn't I hear you testify a few minutes ago in answer to the court's question that the theatre that puts in a bid asks for the clearance?

A. They usually do. I can't remember what happened back on all the bids we received. Again, it wouldn't be necessary for them to do it because we read the bid letters we send to all the accounts, and it states in there that it is one theatre on the 7 day availability, and naturally that means one will be all. It wouldn't be necessary, but I do know there is times when they do stipulate that in their bids. I can't remember what happened in all the bids.

Q. Well, now, is it now the testimony that in your bid request you tell them what theatres you are going to grant clearance over?

A. I didn't say that.

Q. In fact there is nothing in the bid request?

A. That is right. We ask for one bid on the 7-day availability. We ask for one run.

Q. Mr. Marriott, really, isn't it a fact that Fox West Coast in all these negotiations that you had, Fox West Coast is the company that determined what Universal was going to do?

If Fox West Coast said it was all right you did it, and if Fox West Coast said it wasn't all right you didn't do it. Isn't that correct?

A. That is not correct.

Q. How many accounts were you serving so far

(Testimony of Lawrence W. Marriott.)

as Fox West Coast was concerned in 1950 and 1951?

A. '50 and '51? Probably in the neighborhood of 100 or more.

Q. On a national scale your company was serving how many Fox accounts?

A. I don't know nationally.

Q. More than three or four hundred?

A. Could be.

Q. And they were a pretty powerful customer of Universal, [1189] weren't they?

The Court: Now, it is too late in the afternoon to start an argument, Mr. Corinblit.

Mr. Corinblit: All right, your Honor. I don't think I have any further questions.

Mr. Mitchell: No questions.

The Court: May this witness be excused?

Mr. Mitchell: Yes.

The Court: You may be excused, and I hope you have a nice vacation.

The Witness: Thank you very much, your Honor. [1190]

* * * * *

Mr. Corinblit: Thank you, your Honor. At this time we would like to read to the jury and offer in evidence the matters contained in the deposition of Mr. Seymour Simon, taken in Chicago, Illinois, on May 31, 1956, and June 2, 1956.

The Court: It may be received.

The Clerk: Will it be marked as an exhibit, Mr. Corinblit?

Mr. Corinblit: No. We will read it in. Mr. Herschel, if you will read the questions, I will read the answers. [1195]

The Court: I might say to the jury that when a witness is out of the state or more than 100 miles from the court house, it is possible to take his deposition and the deposition can be read and considered by the jury the same as if he was here and testified, so although Mr. Corinblit is reading a part of the deposition, remember it is not Mr. Corinblit's words that are being read, but the words of the witness, and it is the testimony of the witness that you can consider.

All right. You may proceed.

SEYMOUR SIMON

was read as follows:

"Direct Examination

Q. (By Mr. Westbrook): Mr. Simon, would you please state your full name?

A. Seymour Simon.

Q. And your present residence, please.

A. 5900 North Christiana Avenue, Chicago, Illinois.

Q. Your present business address?

A. 39 South LaSalle Street, Chicago, Illinois.

Q. You are an attorney-at-law admitted to practice in Illinois? A. I am.